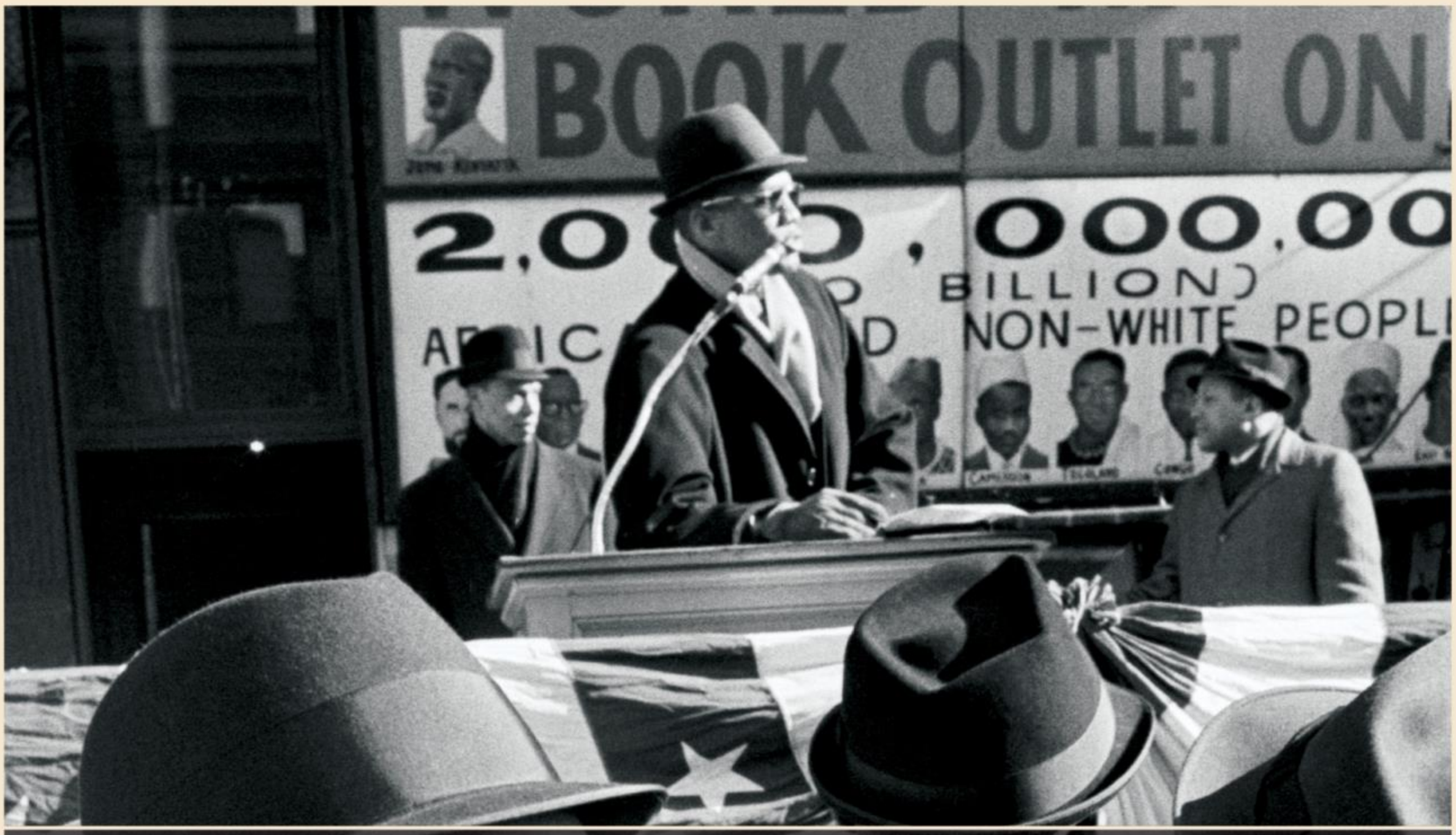

Black Muslims and the Law

Civil Liberties from Elijah Muhammad to Muhammad Ali

MALACHI D. CRAWFORD

VISIT…

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BLACK MUSLIMS AND THE LAW

Civil Liberties from Elijah Muhammad to Muhammad Ali

Malachi D. Crawford

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Introduction

In 1942, Elijah Muhammad, leader of what became perhaps the most influential African American religious community in the twentieth century, went to prison for failing to register for the military draft. Almost thirty years later, in 1971, the U.S. Supreme Court overturned a lower court ruling that found Muhammad Ali, professional boxer and longtime member—albeit suspended—of Elijah Muhammad's religious community, guilty of having violated the Selective Service Act on essentially the same grounds. What took place within those three decades that would cause such a legal turn of events? More importantly, how could Muhammad Ali's public image have emerged from its encounter with American courts as a paradigm for non-violence and moral sacrifice, while Elijah Muhammad's humanistic assumptions about the nature and role of war in the world have gone largely ignored?

More than any other period in American history, the 1950s, 1960s, and 1970s represent what I have always termed the inaugural moment of African American free speech. After centuries of enduring the hardships and terrors of enslavement, peonage, lynching, race riots, political disenfranchisement, economic embargo, police brutality and daily insults, African Americans began to speak and give voice to long dormant thoughts and feels on a vast array of issues and concerns without the need for masks or middlemen. It was a time when African Americans from across the political spectrum began to question the moral legitimacy of both black and white authority—a time when the words "pigs," "devils," and "toms," were uttered with ever-greater frequency. More than anything, however, this new expressive posture emerged as a result of a tendency toward African American self-definition, a process whereby a people establishes its own standards and criteria for existing in the world. This notion of expanded freedoms and determined self-

definition during the Civil Rights and Black Power Movements sits at the heart of this work.

It seems obvious that religion and the role of God in human affairs emerged as one of the many concerns that African Americans sought to clarify and redefine according to their own historic realities and contemporary interests. Although the Lost Found Nation of Islam (NOI), under the leadership of Elijah Muhammad, joined other groups in bringing these concerns to the forefront of public debate within African American communities, its unique history and legal journey raises the most poignant questions as to whether or not African Americans enjoyed religious freedom and the right to define god and morality on their own terms at the height of the Civil Rights Movement.

This work chronicles the evolution of the Lost-Found Nation of Islam's strategy to defend its members' civil liberties and rights to the enjoyment of the free exercise of religion. Intellectually located within the critical race scholarship of A. Leon Higgonbotham's classic works on American slavery jurisprudence, it examines the NOI's quest for civil liberties as a direct and sustained challenge to the suppression of African American religious freedom as a matter of law and social practice. Notwithstanding the consistency and the common expression of their worship styles, ritual observances and religious practice, Nation of Islam members confronted structural racism and a common understanding of what it meant to be African American and religious (in this case Muslim) shared by judges, lawyers, legislators, ministers, and contemporary civil rights activists. This shared interpretation of civil liberties at it related to the religious nature and freedoms of Nation of Islam members is apparent in the court opinions, legal statutes, police actions, and social commentary of the period. At different times and in different spaces, this common understanding resulted in the collusion of federal, state, and African American civic interests to deny Nation of Islam members such fundamentally guaranteed liberties as the rights to free speech, freedom of assembly, freedom of the press—indeed, the legal substructure that supports the free exercise of a group's religion.

Contemporary narratives examining the Nation of Islam (NOI) have suggested that African American disillusionment with the pace and gains of the Civil Rights Movement led to the development of nationalist sentiment among African Americans. According to this analysis, African Americans, thus disillusioned, found solace in groups such as the Nation of Islam, which were supposedly unconcerned with the development of civil rights in America. At best, these studies tend to omit any mention of the Nation of Islam in discussing the evolution of civil rights and liberties in American society; at worst, they have positioned the NOI as fundamentally opposed to the basic objectives of civil rights groups at the time.[1] Yet, as Muhammad Ali's petition for conscientious objector status before the U.S. Supreme Court sug-

gests, the Nation of Islam did attempt to secure religious freedoms for its members. Although Ali's success in court was in some ways a major legal victory in a long tradition of protest for the religious freedoms of NOI members, efforts by NOI members to defend their civil liberties and civil rights proved to be far more expansive than just conscientious objection to military service. NOI members petitioned courts for federal observance of their religious rights to religious literature and spiritual advisors as imprisoned Muslims, to freedom of assembly, and to protection from unwarranted seizures of their religious property.

This study identifies the strategic initiatives launched by the Nation of Islam to defend and advance the civil rights and liberties of its members from 1930 to 1971. Moreover, the study locates the critical period during which the Nation of Islam's struggle for civil rights emerged. What is necessary, then, is a statement describing the confluence of these two principal objectives. I contend that the Nation of Islam's efforts to defend the rights and freedoms of its members became a self-conscious and self-determined struggle for civil rights and liberties upon its acquisition of competent and professionally responsible legal counsel, such as Edward W. Jacko Jr., and its development of *Muhammad Speaks* in the late 1950s and early 1960s. Prior to the emergence of Jacko, who became the NOI's chief legal counsel, and the establishment of *Muhammad Speaks*, the NOI civil liberties problems and encounters with the justice system were marked by an avoidance of coalition building with African American civil rights organizations, an avoidance or uncritical assessment of legal counsel, and individual retreats to martyrdom as personal demonstrations of religious faith.

There are several broad and interrelated questions raised by this study. How, for example, does twentieth century American history attempt to understand a struggle for civil liberties led by an African American religious group that emphasized social and racial separation while simultaneously shunning electoral politics? Also, how did NOI members locate themselves within a movement largely defined by groups and organizations whose principal objectives were directed at achieving social integration in American society? How does the NOI's struggle for social justice inform the historical canon of the Civil Rights Movement? In a democracy of competing interests, what struggles are morally and socially legitimate? More specifically, among African American civic groups, who determines which interests or civil rights concerns merit value and which do not? In a general sense, the idea that divergent African American socio-political figures and organizations that alternatively desired integration into and separation from American society could simultaneously pursue social justice concerns is a major contribution of this study.

To understand the depth of the NOI's legal contributions to civil rights gains in America, the study places a heavy emphasis on the use of court

records and legal opinions issued by court justices that detailed various legal questions and issues being raised by NOI members. The strength of such an approach is evident in its ability to demonstrate how the NOI's legal struggles created a social space for African American Muslims to practice their faith by challenging the disparate treatment its members received as opposed to practitioners of other religious faiths. The courts became a primary site within which the NOI sought to advance its civil rights initiatives.

On the other hand, such a method is not by itself a reliable indicator of how the NOI's struggle for agency and civil rights manifested itself outside of the courtroom. For this reason, the research design also examines newspaper articles in *Muhammad Speaks*, the official newspaper of the NOI, and elsewhere to assess the NOI's strategic initiatives to defend the civil rights and liberties of its members. Committed to helping bring "freedom, justice, and equality" to African Americans, the editorial staff of *Muhammad Speaks* proved a formidable resource in bringing the NOI's civil rights efforts to the attention of African American communities. Unlike other sources, the assessment of newspaper articles in *Muhammad Speaks*, and elsewhere, permitted the evaluation of widespread NOI social justice initiatives over an extended period of time. This proved critical to discerning the NOI's "strategic" initiatives to protect the civil rights and liberties of its members.

At the same time, the Federal Bureau of Investigation's (FBI) intelligence files on Malcolm X, Elijah Muhammad, and the Nation of Islam provided invaluable insight into critical decisions and initiatives made by key NOI officials seeking to stave off government led challenges to the religious community. Being a federal agency, it was, perhaps, intuitive for the FBI to approach its investigation of the NOI and its members from a systemic basis. Although heavily weighted to produce certain political objectives and justify various law enforcement actions, these files, too, were germane in helping to discern the NOI's strategic initiatives to defend its member's civil rights and liberties.

By examining the NOI's contribution to civil rights struggle in America through court records, FBI files, public speeches, oral histories, and other primary sources, this study does not take under consideration various cultural nuances between the NOI and civil rights organizations of the period that may account for dissimilar tactical strategies between these two groups. Specifically, a cursory ethnographic review of the NOI's motifs, theology, and creation myths reveals that this religious group viewed African Americans as divine beings.[2] Among other things, this meant that NOI members as well as others in society would have to come to terms with the dignity and sacredness of African American life—and, by extension, the African American body. On the question of police brutality in African American communities specifically, the NOI rejected the notion of passive resistance to acts of

arbitrary and capricious violence against African American bodies as a strategy for gaining civil rights.

A special mention must be made of the late Dr. Winston Van Horne, whose concepts of legal and social legitimacy are applied here as a theoretical design to help guide and interpret the primary sources under investigation. Although Van Horne's analysis attempts to understand violence, such as lynching, his concepts of legal and social legitimacy lend themselves to the interpretation of political and social struggles as well. According to Van Horne, events, facts or phenomena become permissible with any social system depending on the degree to which these things have attained legal and, or, social legitimacy.[3] In helping to establish the legal precedent that allowed incarcerated NOI members to assemble and pray in prisons and receive ministers and published materials from their own religious community, Malcolm X and Edward W. Jacko, Jr., for example, contributed to the NOI's legal legitimacy as a religious community. Likewise, Van Horne asserts that "Social legitimacy entails the shared norms, beliefs, and attitudes of a tribe, clan, racial/ethnic grouping, community . . . or society concerning the desirability, acceptability, and appropriateness of given behaviors and their outcomes."[4] Thus, the NOI's development of *Muhammad Speaks* as a public relations initiative speaks to its desire to help improve the group's social legitimacy as a religious community in American society.

The study is both chronological and thematic in its organization and presentation of events and ideas. The first chapter surveys the development of the Nation of Islam's (NOI) ethno-religious ideology and ideas about civil rights within the context of Elijah Muhammad's early life and the contemporary African American quest for civil rights in late nineteenth and early twentieth century America. Broadly speaking, the NOI did not prioritize the pursuit of civil rights or liberties in its early years. In fact, the NOI argued that obtaining equal treatment under the law for African Americans was not a viable option and did not address the root causes of racial conflict in America. Instead, the NOI saw a critical need for Americans to respect the life and human dignity of African Americans as a prerequisite to discussing the possibility of African Americans acquiring civil rights, and viewed Islam as the path toward accomplishing that goal. Likewise, NOI members consistently petitioned their understanding of Islam as the ultimate source for guiding their behavior in society. Simply put, until statehood could be obtained, this view placed an emphasis on reforming the morality and ethics of African Americans as individuals instead of society as a whole.[5]

Chapter 2 examines the NOI's early, or proto determinist, efforts to defend the civil rights and liberties of its members. Whereas the NOI actively invoked its Islamic beliefs as a legal recourse to justifying its political and religious expression in American society, early attempts to defend the civil liberties of NOI members were characterized by a failure to develop strategic

relationships with contemporary civil rights organizations, a lack of competently trained lawyers in civil liberties laws, and a tendency to result to physical confrontations to seek justice. The chapter will demonstrate that between 1934 and 1938, the public perception of the NOI among African American civic leaders underwent frequent strain as accusations and revelations about NOI ritualistic killings filtered out into African American communities. These problems had the cumulative effect of neutralizing the NOI's ability to defend the civil liberties of its members from an optimal legal or social position, that is, a position of power.

Chapter 3 looks at the role that NOI women played in providing a potential basis for both the social and legal recognition of the NOI as a legitimate religious community. While men might have controlled administrative posts within the NOI, they had little control over the organizational infrastructure that both dictated and contextualized the everyday religious experiences of women in the community. The chapter demonstrates that in the absence of a group of administrators who could deliver a consistent, coherent, and unified message on the NOI's core values and identity, women became critical to the institutional sustainability and social legitimacy of the NOI during its initial period of instability (1934–1942).

Chapter 4 locates the emergence of the NOI's self-conscious and self-determined struggle to defend the civil rights and liberties of its members within the context of its institutional and organizational expansion, and identifies critical developments that—although external—directly influenced the religious community's legal legitimacy. On both an institutional and operational level, the NOI began to increase its membership by expanding the venues in which it sought to propagate its ethno-religious beliefs following World War II. Yet, there were also other developments that would have favorable consequences for the NOI. For example, the chapter will show that by 1940, Charles H. Houston, the prolific legal scholar who provided the legal framework for dismantling segregation in public education, began to alter his objectives at Howard University's School of Law to meet the evolving legal needs of African Americans. Most significantly, Houston reprioritized the discussion of civil liberties such as freedom of religion, speech, and assembly within his course on civil rights. The emergence and eventual retention of perceptively trained lawyers such as Edward W. Jacko, Jr., a former student in Houston's revamped civil rights course, allowed the Nation of Islam to defend the religious beliefs of its members from a position of power.

Chapter 5 explores the NOI's profound shift in both its strategic and tactical approach to defending and advancing the civil rights and liberties of its members. So long as the NOI confronted agencies stemming from the executive branch (e.g., the FBI, Federal Bureau of Prisons, local police) on its own and in a one-dimensional manner, it had remained in a relatively

weak position in its ongoing encounters with law enforcement officials. In opening up a second front in its struggle for civil rights and liberties by pursuing legal initiatives in the courts that questioned the constitutionality of the religious discrimination its members endured, the NOI placed itself in an empowered and more favorable position to protect the religious freedoms of its members. More specifically, the period between 1960 and 1965 witnessed incarcerated NOI members submit numerous legal petitions in an attempt to acquire religious freedom in prisons across the country. This historical initiative was critical to the NOI's success in acquiring legitimacy as a legally valid religious community in American courts.

Chapter 6 demonstrates that leading officials in the NOI clearly recognized the impact that negative public relations and public perceptions of the group had on the legal rights of its members and took precautions to manage the group's public image. To this end, the chapter explores the manner in which groups external to the NOI perceived and constructed the Nation as an irreligious, un-American, subversive and pro-communist political movement. The evidence suggests that in spite of attempts by the media, academicians, government agencies, and national civil rights groups to portray the Nation as a "fringe," or socially undesirable group, *Muhammad Speaks* became a consistent vehicle through which the NOI contested these assertions, defended the civil liberties of NOI members and defined the NOI as a socially legitimate religious community.

The seventh chapter explores Muhammad Ali's legal battle to obtain conscientious objector status and a ministerial exemption from serving in the U.S. Armed Forces as being illustrative of key challenges in the NOI's strategic initiatives to defend the civil rights and liberties of its members. From 1966 to 1971, Muhammad Ali's resistance to the military draft came to symbolize, perhaps more than any other person or event at the time, the NOI's evolving civil rights struggle. His use of the courts to achieve justice represents a clear departure from earlier times when the experiences and teachings of the NOI suggested that concepts such as freedom, justice and equality could not be achieved in such forums. Likewise, as *Muhammad Speaks* had been critical to defending the NOI's social legitimacy as a religious institution in previous years, the newspaper continued to support Ali through his travails with the Selective Service System. Yet, Ali appears to have been more of an exception to the general rule. By 1965, the NOI attempted to limit its exposure to government harassment by allowing other groups and leaders to take the initiative in expressing African American social frustrations at the time. The chapter suggests that the NOI's failure to prioritize its collective civil rights and liberties concerns within ongoing discussions of African American self-determination resulted in a series of missed opportunities through which it might have advanced its legal and social legitimacy as a religious institution.

The study uses the term "ethno-religious" to refer to the NOI's identification of itself as a nation-within-a-nation with distinct religious beliefs. Although the NOI's belief system was extensive, a cursory analysis of NOI theology reveals that NOI members believed in a god named Allah, the revelations of Allah as revealed in the Holy Qur'an, the notion that Allah would seek divine judgment against the unjust and unfaithful, the notion that blacks were Allah's chosen people, not participating in wars, and the social separation of whites and blacks.[6] Also, C. Eric Lincoln and others have noted that NOI members principally viewed themselves as citizens of the Nation of Islam.[7] This sense of nationalism prioritized the formation of a collective consciousness or shared identity before any claim to a definitive area of land. Similarly, NOI members consistently cited their citizenship in the Nation of Islam as the principal rational behind the defense and articulation of their beliefs during their initial, proto determinist, years.[8] Indeed, as Kathleen M. O'Connor suggests, "It is not secular nationalism that unlocks the meaning of 'Nation consciousness,' used in recent years to describe [African American Muslim] discourse, but *religious* nationalism."[9]

Moreover, in the context of this study the term suggests that on a basic ontological level, the Nation of Islam's criteria for civil existence—membership in a nation—included, but was more expansive and therefore differed from the general requirements associated with America citizenship. In essence, the NOI's understanding of civil rights did not spring from American cultural products such as the U.S. Constitution but from their perception of world history and interpretation of Islam. Indeed, Otis B. Grant notes that one of the principle differences between Martin L. King, Jr. and Malcolm X was that Malcolm X, "embraced nationalism partly because he construed the Constitution to be merely a set of rules and regulations that reflected the law and policies of the white majority."[10] Moreover, as Amina B. McCloud points out, "A growing concern for African American Muslim communities centers around United States law and its implications. The guiding force of Islam is a set of laws and authority that transcends the United States legal system. Oftentimes there is tension between the two."[11] Briefly then, the NOI's articulation and defense of its ethno-religious identity revolved around the group's quest for both self-definition and agency, that is, creating and determining the reality of its members based on its own particular self-interest. Although the NOI did not align itself with any specific civil rights group, its ethno-religious identity provided the rational through which it would defend its freedoms and rights as a religious community.

The implication of the thesis that directs this study is far reaching. Although the Nation of Islam was routinely characterized as violent and irreligious by law enforcement officials and contemporary civil rights organizations of the period, emphasizing the religious community's legal approach to obtaining civil rights and liberties highlights the NOI's use of strategy and

multidimensional approach to social and political struggle. Moreover, this story is—at its best—a compelling story of achievement against overwhelming odds: African Americans struggling for their right to religious belief on their own terms, unapologetically. As such, it represents one of the many untold stories of an African American community acting in its own self-interest and successfully bringing long-term change in the everyday lives of its members.

NOTES

1. Saadi A. Simawe, "Islam in the Civil Rights Movement" in *Engines of the Black Power Movement: Essays on the Influence of Civil Rights Actions, Arts, and Islam*, ed. James L. Conyers, Jr. (Jefferson: McFarland & Company, Inc., Publishers, 2007), 201.
2. Kathleen Malone O'Connor, "The Islamic Jesus: Messiahhood and Human Divinity in African American Muslim Exegesis," *Journal of the American Academy of Religion* 66, no. 3 (Autumn, 1998): 496–497.
3. Van Horn actually has three interrelated concepts of legitimacy: legal legitimacy, moral legitimacy and social legitimacy. The concept of moral legitimacy is not included as a theoretical guide within this study due to the methodological difficulty in assessing how the objections of a religious community achieve moral legitimacy. The most probably argument in this direction might conclude that the NOI's quest for conscientious objector status achieved moral legitimacy during the national uproar over the military draft during the Vietnam War. See, Winston A. Van Horne, "Three Concepts of Legitimacy," in *Law, Culture & Africana Studies*, Africana Studies, ed. James L. Conyers, Jr., no. 2 (New Brunswick: Transaction Publishers, 2008), 47.
4. Ibid., 51–52.
5. Christopher E. Smith, "Black Muslims and the Development of Prisoner Rights'," *Journal of Black Studies* 24, no. 2 (December 1993): 133.
6. "The Muslim Program," *Muhammad Speaks*, August 16, 1963, p. 24.
7. C. Eric Lincoln, *The Black Muslims in America*, 3d ed. (Grand Rapids: Eerdmans Publishing Co., 1994), 44; William L. Van Deburg, ed., *Modern Black Nationalism: From Marcus Garvey to Louis Farrakhan* (New York: New York University Press, 1997), 97.
8. "Tells Court His Allegiance Pledged to 'Islam'; Not U.S.," *Chicago Defender*, August 8, 1942, p. 12, col. 5.
9. O'Connor, "The Islamic Jesus," 504.
10. Otis B. Grant, "Constitutionalism Within the Political Ideologies of Malcolm X and Martn Luther King, Jr.," in *Engines of the Black Power Movement: Essays on the Influence of Civil Rights Actions, Arts, and Islam*, ed. James L. Conyers, Jr. (Jefferson: McFarland & Company, Inc., Publishers, 2007) 225.
11. Aminah Beverly McCloud, *African American Islam* (New York: Routledge, 1995), p. 121.

Chapter One

Law, Religion, and the Rise of the NOI

For several decades following the close of the Civil War, America underwent a period of rapid industrial development that produced economic, social, and political change known as the Gilded Age. Characterized by the political and economic exploitation of the American working class and recently arrived immigrant labor from Europe, the period saw the rise of a wealthy American business class entrenched within the fabric of American political power.[1] Although the social and political reforms ushered in at the turn of the twentieth century by the subsequent Progressive Era would attempt to place working class concerns at the center of American politics, the commercial successes of the Gilded Age endured the world's first World War and served as a basis for America's introduction into the modern era.[2] Remembered in social parlance as the "roaring twenties," the time between the end of World War I and the Great Depression witnessed fundamental changes in American attitudes toward leisure, gender roles, and the use of public and private space, dating and work.

For African Americans, one of the principal events occurring during this same period, the Great Migration, was no less significant as a medium of social, political, and economic change. From 1915 to 1930, approximately 400,000 to 500,000 African Americans migrated primarily from Southern states that had made up the former Confederacy to heavily urbanized cities in the North.[3] African American men who came in search of employment and the promise of better wages seem to have composed the ranks of the first wave or initial group of migrants that came northward. Some African American migrants, however, responded to the allure of better educational possibilities, race relations, and political enfranchisement advertised in African American newspapers such as the *Chicago Defender*. Still other African Americans clearly viewed migration to the North in spiritual terms

as a place that offered freedom from peonage, vagrancy laws, lynching, and political oppression.[4] It seems clear that Elijah Muhammad responded to many of the same changes that other African Americans were experiencing during this time.[5] More specifically, given Elijah Muhammad's early life experiences, it is perhaps unsurprising that the NOI's social and political discourse on civil rights and race relations paralleled the thought of late nineteenth and early twentieth century African American leaders. The social context surrounding Muhammad's birth and early development were likely factors that conditioned both his eventual political and social belief system as well as the Nation of Islam's approach toward civil rights issues.

Born in Sandersville, Georgia, in October 1897, to Willie and Mary Poole, Elijah Poole would become a witness to the perilous—if not tenuous—state of African American life in the South.[6] By the age of fifteen, Elijah bore witness to a lynching that had a very personal impact on his life and future conclusions about race in America. In 1912, a white lynch mob murdered Albert Hamilton, a well-known African American youngster and friend of the Poole family accused of accosting a white female in the city of Cordele.[7] Believing that employment and possibly better race relations might be found in the city of Macon, an emerging metropolis with a booming industry economy, Elijah Poole moved his wife, Clara, and young family there city eight years later. After spending some time in the city searching for employment, he found work with the Georgia Southern R.R. and the Cherokee Brick, Co., two major employers that—like so many other labor-intensive companies in the state—supported the use of convict leasing that resulted from vagrancy laws.[8]

Among other forms of subordination, vagrancy laws, designed to provide public and private interests in the South with a reliable source of cheap labor, primarily forced African Americans who could not provide law enforcement with proof of employment or a visible means of support onto convict leasing projects or chain gangs. Whereas states that leased the labor of African Americans convicted of petty misdemeanors or felonies out to private companies engaged in convict leasing, those forcing African American prisoners onto chain gangs ostensibly did so for the public good, where they worked on such public works projects as building roads, ditches, and bridges. Because vagrancy laws denied African Americans the basic right of dispensing with their labor as they saw fit and forced unsuspecting persons into cruel conditions by force or through collusion between private interests and local authorities, they not only violated the constitutional protections regarding due process given African Americans under the Fourteenth Amendment, but also conflicted with the Eight Amendment's prohibition against cruel and unusual punishment as a penalty for a crime and requirement that sentencing comport with "evolving standards of decency."[9] Moreover, states would retain legal

jurisdiction over the treatment of prisoners in correctional institutions until the early 1960s.

One of the dominant African American leadership figures seeking to resolve race relations in the South during the late nineteenth and early twentieth century was Booker T. Washington, an educator, orator, and business philosopher. Aware that a fundamental economic shift in the dominant modes of production was underway in the South and using his position as president of Tuskegee Normal and Industrial Institute as an operational base for espousing a platform of vocational education, Washington began to develop and put in place a cadre of skilled African American labor who could compete with newly arriving foreign-born labor from eastern and southern Europe. His focus on vocational education provided a practical basis for confronting the arbitrary detention and conscription of African Americans into prison and chain gangs on vagrancy charges. More importantly, Washington outlined the basic aspects of his social and political thought in an address he delivered at the Atlanta Cotton Exposition in 1895, touting the ethical merits of hard work, economic self-reliance, and racial separation.[10] In addition to the emphasis on economic self-reliance and racial separation, the crux of Washington's argument—that African Americans should focus on reforming themselves instead of reforming society—formed the basis of a sociopolitical tradition that most paralleled the NOI's position on advancing respect for African American human rights before engaging in civil rights struggles. In a sense, both Booker T. Washington and Elijah Poole came to believe that African Americans had to respect their own humanity before anyone else would feel the need to do so.

Although Elijah's birth followed soon after Washington's Cotton Exposition speech as well as the infamous *Plessy v. Ferguson* case in which the U.S. Supreme Court upheld the constitutionality of social segregation on the basis of race, his life experiences witnessing lynching and African American conscripted labor invariably led him to decide that cities in the North might hold better opportunities for the survival of his family. In 1923, as one of the thousands of African Americans that migrated northward in the two decades following the end of WWI, he moved his family to Detroit, where he encountered ideas and movements that continued to play an important role in shaping his thought and the beliefs of the religious community he would eventually come to lead.[11] Of the movements then developing among African Americans, perhaps none were as remarkable as the Universal Negro Improvement Association.

The rapid ascendance and notoriety of the Universal Negro Improvement Association (UNIA), established by Marcus Garvey in 1916, in African American communities at the end of WWI was in no small degree the result of the increasing populations of African Americans in urban areas associated with the Great Migration. Headquartered in Harlem, New York, the organ-

ization filled its ranks with members in cities across the Midwest and Deep South. Although Garvey initially had difficulty making inroads among African Americans, his approach to solving the "problem of lynching, peonage, and disenfranchisement," among African Americans, proved to be extremely significant in attracting new members to the cause and program of the UNIA.[12]

Racial separation and economic self-reliance were two of the central concerns within the UNIA's political ideology that greeted newcomers entering into the organization. On the one hand, Garvey argued that the structural reality of the nation state was indispensable to promoting and protecting the human rights of African people.[13] Yet, he was also aware that disfavor and discrimination against African people increased due to the lack of African economic ownership and enterprise in African communities across the globe. As a solution, Garvey proposed that self-reliance in economic affairs was imperative if African Americans were to gain respect among other people in the world. According to Garvey,

> The disposition of the many to depend upon the other races for a kindly and sympathetic consideration of their needs, without making the effort to do for themselves, has been the race's standing disgrace by which we have been judged and through which we have created the strongest prejudice against ourselves.[14]

The UNIA created and engaged in multiple endeavors to launch a self-sustaining global African economy. Among the economic enterprises launched by Garvey and the UNIA was the Negro Factories Corporation, which employed thousands of African Americans daily. The UNIA also owned real estate, a clothing store, deli, and several restaurants in New York alone. The association established a newspaper, the *Negro World*, so that African people across the globe could express their political and social views without the fear of physical intimidation and threat from news bureaus opposed to their national interests. With very few notable exceptions, the majority of the UNIA's business ventures were successful—so much so that by the advent of the organization's demise and Garvey's deportation in 1927, the UNIA still had assets valued at over $130,000.[15] Ironically, criminal allegations that Garvey had used the federal mail system to defraud stockholders in the Black Star Steamship Line would lead to his arrest, imprisonment, and the UNIA's tragic downfall.

When Elijah Poole arrived in Detroit, Michigan, in 1923, he became one of the several millions of persons of African descent drawn to and inundated by news of the trial of Marcus Garvey. Arguably one of the most closely watched court cases in early twentieth century African American legal history, the socially prominent newspaper editors supporting Garvey's prosecu-

tion and high drama surrounding the trial were of international significance. In little more than six years, Garvey had succeeded in creating the largest mass movement and organization of African descended people in modern history. Given the timing of his arrival in Detroit, Poole would have been exposed to Garvey's ideas and novel understanding of the relationship between power, space and time in American courts.

Marcus Garvey pioneered a template of court martyrdom that influenced how generations of other Africana self-determined organizations would interact with America's courts and judicial system to bring about social change. Against the professional and capital resources of a trained federal prosecutor, Garvey chose to dismiss his legal counsel and defend himself in court. In so doing, Garvey made the trial less about the charges brought against him of mail fraud and exponentially more about the UNIA's fundamental cause—the right of African-descended peoples to define their socio-economic reality and determine their political destiny. In this way, what some legal observers considered a tactical error, proved to be a strategic victory. To his followers, the trial appeared to be the latest in a string of attempts to discredit, destroy, suppress or subvert Garvey and the UNIA. His example provided a social proof that even when the truth and honorable intentions of the UNIA were self-evident, American courts could and would be used to attack such movements in what might be called a classic American show trial. At the same time, court martyrdom provided Garvey with both a strategy for drawing mass political support to influence the legal outcome of his trial and grounds for ensuring the social longevity of his ideas and image.

Likewise, it seems plausible that Elijah Poole would have been—at the very least—marginally receptive to the UNIA's concepts of economic self-reliance and racial separation. The UNIA's emphasis on the benefits that could be gained through economic self-reliance and racial separation found solace among many working class African Americans. At the time of Elijah's migration to the city of Detroit in search of employment, the city had been a major center of UNIA activity.[16] Moreover, there are credible allegations that Elijah may have joined the ranks of the UNIA's Chicago or Detroit branches.[17] Emphasizing the benefits of economic self-reliance would become a key method of attracting new members to the NOI's ethno-religious belief system after WWII.[18] At the time Muhammad encountered W. D. Fard in 1931, however, the NOI was steadily advancing an ethno-religious ideology that principally sought to challenge the legacy of enslavement and its impact on the humanity of African people in America by positioning its understanding of Islam as a solution to America's race problems.

According to interviews taken of early members in the NOI regarding the group's formation, W. D. Fard had come to Detroit from the "Holy City of Mecca, Arabia" as a peddler of silks and exotic fragrances to the area's principally African American population in the summer of 1930.[19] Working

among the residents of Paradise Valley in this way and interspersing aspects of Islam with African American history into his business dealings, Fard organized a sizeable community of followers. African Americans who had previously encountered Garvey's ideas might easily have been attracted to Fard's ministry as a laudable—albeit small—example of economic self-reliance.

In 1931, Wallace D. Fard made his way to the flat of Elijah and Clara Poole in Paradise Valley, Detroit. Perhaps it was a Thursday, but on that particular day, a guardedly curious Clara Poole opened her door to the foreigner and his wares. Although it is unknown whether Clara purchased any of the items in his cart, the salesman did seize the opportunity to introduce her to his religion—Islam. To be sure, there were several religious groups propagating Islam in African American communities at the time that viewed the religion as a potential means of resolving American racial conflict. In order to understand the ideological differences, political trajectory, and essential appeal of the NOI's interpretation of Islam to people such as Elijah and Clara Poole, a brief overview of this history is necessary.

As a foreign born immigrant of possible Pakistani, Arabian, or Turkish origins, Fard was part of a wave of Muslims who migrated to the United States from countries witnessing the advance of Western civilization via war, trade, and colonization during the late nineteenth- and early twentieth-century.[20] His critique of American society and culture falls within the historical circumstance and context of what some scholars have characterized as an international clash between Islam and modernity occurring at the time.[21] These events had profound consequences in terms of the political nature of the Islamic doctrines introduced to African American communities—communities that may have held unfavorable dispositions toward the West and Western culture given their own political circumstances and Europe's colonial domination and exploitation of Africa. Among the many foreign born Muslim groups that migrated to the United States in the early twentieth century, the Ahmadiyyah Muslim community played a seminal role in shaping the early religious theology of the NOI. Similar to the Nation of Islam, the Ahmadiyyah believed that Islam was critical to brining moral enlightenment and ethical reform to America.

Central to the propagation activities of the Ahmadiyyah's in America were its translation and conversion efforts. Among other things, its translation of the Yusuf Ali version of the *Holy Qur'an* into English was of principal importance to its missionary efforts in America. Any Muslim community in America having an English translation of the *Holy Qur'an* prior to the 1970s, therefore, almost certainly came into contact with the Ahmadiyyah's. Similarly, it is evident that the Ahmadiyyah's were largely responsible for converting the first American to Islam, Alexander Russell Webb. Webb, who

traversed the country speaking on Islam in the late nineteenth century, came into contact with the teachings of Ghulam Ahmad in the 1880s.[22]

Richard Brent Turner has presented credible evidence that contact occurred between the NOI and Ahmadiyyah missionaries, and such an idea seems highly likely given the propagation efforts of the Ahmadiyyah. The Ahmadiyyah had firmly established themselves as a source of information on Islam in the urban areas of both Detroit and Chicago—the two cities that alternately served as the NOI's headquarters and were so crucial in its early development—at least a decade prior to the creation of the NOI.[23] By 1920, the movement had chosen Chicago as its base of operations in the U.S.[24]

Through the use of community lectures and its newspaper, *The Moslem Sunrise*, the Ahmadiyyah successfully converted hundreds of Americans to Islam. The movement argued that Islam was free of race bias and represented a point of departure for discussions about interracial cooperation in all areas of life. This particular aspect of the Ahmadiyyah's belief system proved somewhat appealing and therefore effective in Ahmadiyyah conversion efforts among middle-class African Americans, who became the group's primary constituency in America. Throughout the early 1920s, the Ahmadiyyah's gave lectures at multiple Universal Negro Improvement Association meetings and were successful in converting African Americans in both Detroit and Chicago.[25]

Outside of its propagation of Islam through its translation of the *Holy Quran* into English and publication of *The Moslem Sunrise*, the exact nature of the Ahmadiyyah's influence on the Nation of Islam remains elusive. To reiterate, while the Ahmadiyyah movement did eventually direct its efforts at spreading Islam to African Americans, its primary mode of propagation, literature and speeches on university campuses, was effectively directed toward middle-class African Americans.[26] In its early years, the Nation of Islam drew its members from among the many unskilled and semi-skilled African American laborers and others who had migrated to northern cities such as Detroit, Chicago, Pittsburgh, and Newark, in the first half of the twentieth century. The Ahmadiyyah's vision of Islam as a solution to America's race problems and its critique of the material excesses that it perceived as characterizing American social culture represented its closest ideological connection with the Nation of Islam. Unlike the Ahmadiyyah community, however, the NOI posed Islam and Christianity as racially exclusive religious spheres that respectively served the separate interests of African Americans and whites. Although the Ahmadiyyah appear to have played a largely indirect role in shaping the religious beliefs of the NOI, another Muslim community had a more direct influence on shaping the core ethnic beliefs and ritualistic practices that were at the heart of the NOI.

In 1913, Timothy "Noble" Drew Ali established the Moorish Science Temple of America (MSTA) in Newark, New Jersey. From its birth until the

death of its founder in 1929, the MSTA appealed—and continues to appeal—to African Americans of various socioeconomic backgrounds. Rooted in Masonic, Gnostic, and Islamic traditions, Drew Ali espoused a theology that viewed African people as divine beings that descended from an Asian-African race called "Asiatics."[27] Additionally, the MSTA considered Islam to be the true religion of African Americans and promoted "Love, Truth, Peace, Freedom, and Justice," as the ethical cornerstones of their belief system.[28] The influences that the MSTA had on the NOI were numerous and will be discussed momentarily; however, it is imperative to note that the NOI derived core beliefs within its theological teachings, such as African Americans being "Original People" and Islam being their true religion, emanate from the MSTA.[29]

Under the direction of its founder, Noble Drew Ali, the Moorish Science Temple brought together various Gnostic, Masonic, Christian, and Black Nationalist traditions to create a unique and yet synthetic understanding of Islam. Particularly in its understanding of the Islamic concept of *tawhid*, or the oneness of Allah (God), the MSTA came to view human beings as living reflections of Allah that could attain a state of divine consciousness through rigorous self-discipline and a struggle to be righteous. This understanding of *tawhid* corresponds with well-established scholarly interpretations of the concept emerging from the Sufi Islamic tradition.[30] It appears that the NOI incorporated this understanding of human divinity into its belief system with the understanding that it applied only to Asiatic-blacks, or African-descended populations.

Yet another influence of the MSTA upon the NOI was the former's belief that self-definition, or signification, is imperative to bringing about social and political change. Naming, in particular, became a principal means through which the MSTA sought to change the social and political status of African Americans. In accordance with this view, MSTA members appended the names *El* or *Bey* to their surnames to reflect their Moorish ancestry.[31]

Similarly, the Nation of Islam appears to have incorporated many of these same concepts and ideas into its teachings and rituals. The ethical cornerstones of the NOI were "Freedom, Justice, Equality, and Islam." NOI members appended the letter "X" to their first names to replace surnames that they associated with the enslavement of African people in America. Instead of using the MSTA term Asiatic, NOI members referred to their nationality as "Asiatic-blacks"[32] Unlike the MSTA, however, the NOI did not use its practice of self-naming as a means to gain American citizenship.

Additionally, MSTA members received nationality cards that identified them as Moorish Americans. By connecting African American heritage to the history of the Moorish empire, Drew Ali had created a positive ethno-religious identity that African Americans could draw upon to view themselves and be viewed by others as being entitled to the rights and privileges

of American citizens. Perhaps expecting to be treated as foreign nationals, some MSTA members went so far as to get arrested for accosting police members with their nationality cards and the newfound status they expected to enjoy as Moorish Americans. Accordingly, African Americans joining either the MSTA or the Ahmadiyyah community viewed Islam as a bridge to obtaining respect for their civil rights. Because the NOI interpreted Islam in racially exclusive political and social terms, it is doubtful that members in this religious community held similar expectations.

Taken together, then, each of the aforementioned movements and figures profoundly influenced the social context out of which the religious beliefs of the Nation of Islam emerged. The necessity of economic self-reliance as an indispensable tool of nation building had been developed and partially realized among African Americans by the UNIA. The possibility that the importance of economic self-reliance transferred over to the NOI from the UNIA seems highly probable given the reality that many early NOI members had previously affiliated with the UNIA in some manner. Moreover, it is apparent that the MSTA's ideas of self-definition, the divinity of man, and the use of religious history to formulate a new and alternative national identity provided the NOI with a blueprint to build its ethno-religious beliefs.

Elijah Poole, who became Fard's chief minister, took on the surname Muhammad, and eventually went on to succeed Fard as leader of the religious community that became the NOI, believed that Fard's appearance among African Americans in Detroit was no mere accident. Fard represented the "Great Mahdi," whose purpose was to give African Americans the true understanding of their history, religion, and divine purpose on earth.[33] Moreover, Fard's initial teachings resulted in the establishment of several fundamental political, social, and religious premises that become important to understanding the NOI's views on African American civil rights and civil liberties activism.

One of the most consistent historical themes that Fard built upon to explicate his purpose in America was the influence that enslavement had on African Americans. According to Fard, enslavement had robbed African Americans of having a true knowledge of themselves and their historical importance in the world. Elijah Muhammad later recalled that Fard "came Himself to teach us the knowledge of self. . . . He has declared that we are descendants of the Asian black nation and of the tribe of Shabazz."[34] Politically speaking, the NOI argued that the value African Americans placed on obtaining citizenship in America resulted from an inability to remember and identify with the heritage and traditions of their Islamic ancestors. Elijah Muhammad would later implore African Americans to "Accept your own," and ignore programs espousing social integration as a path toward civil rights.[35]

Moreover, the fact of enslavement had created widespread disregard for African Americans' worth as human beings. Fard suggested that NOI members could not look to the US Constitution to guarantee ideas such as freedom, justice, and equality—as these ideas were inconsistent with the African American experience in America. In expressing political and economic ideas similar to both Washington and Garvey, the NOI emphasized the development of racially separate social and economic institutions, a skilled labor force, and the creation of a sovereign African nation as alternatives to robustly defending African American civil rights and liberties. However, the NOI also came to suggest that Islam provided both a basis for protecting African American freedoms and reasserting dignity and respect for African American humanity.

For newly admitted members such as Elijah Muhammad, Islam became a means for addressing the influence of enslavement on their everyday lives, a point of focus for reforming their behavior and identity, and a human rights guide within the context of American society. Fard claimed that slavery had altered the original dietary habits of African Americans. Observing the eating habits of his initial converts, he cautioned, "Now don't eat this food. It is poison for you. The people in your own country do not eat it."[36] Consequently, he introduced new dietary proscriptions against eating foods like pork, catfish, rabbit, possum, squirrel, corn bread, and other foods associated with the diets of enslaved Africans in America.[37] Not only did he forbid the consumption of these foods, but he also admonished his followers from physically touching such items lest members become spiritually unclean—an ethic that would take on added significance among imprisoned NOI members in later years. Fard is also given credit for establishing both the Fruit of Islam (FOI) to protect NOI members from police harassment, the Muslim Girls Training and General Civilization Class (MGT-GCC) to instruct NOI women in the ethics and obligations of Muslim women, and the University of Islam for the instruction of grade school children.[38]

Additionally, newly accepted NOI members received Islamic names to replace their surnames, which Fard identified as products resulting from the enslavement of African Americans at the hands of Christian enslavers. Erdmann Doane Beynon, a sociologist who interviewed over two hundred families in the NOI in 1937 and published the first scholarly study of the group, noted that members ". . . became so ashamed of their old slave names that they considered that they could suffer no greater insult than to be addressed by the old name."[39] Many of the initial members in the NOI had belonged to Christian denominations, but for a variety of theological, economic, social, and political reasons parted ways with their former belief systems.[40]

Indeed, the evidence suggests that Fard deliberately used biblical imagery, metaphors, and teaching methods to assist new adherents, many of who were Protestant Christian converts, in contextualizing their political and spir-

itual condition and discerning the racial aspects of Christianity. Fard lectured from a bible during the NOI's initial study sessions, described North America as a "wilderness," for African people, and questioned portrayals of Jesus as an ethnic European that frequently appeared in African American churches.[41] Similarities between the eschatological teachings of the Watchtower Bible and Tract Society and the Nation of Islam on concepts such as end time, the Battle of Armageddon, and the coming of the Millennium, suggests significant borrowing of doctrinal ideas occurred on the part of the Nation of Islam during its formative years. Both W. D. Fard and Elijah Muhammad encouraged NOI members to read and listen to the teachings of Joseph F. Rutherford, the first president of the Watchtower society.[42] Other evidence suggests that Fard borrowed certain doctrinal ideas from the *Aquarian Gospel of Jesus the Christ* written by Levi H. Dowling. Eventually, the Nation of Islam incorporated many of these ideas into two books that Fard reputedly authored: The *Secret Ritual of the Nation of Islam* and *Teaching For the Lost-Found Nation of Islam in a Mathematical Way*. The first text evolved into a catechism of sorts for new members to the NOI.[43]

The movement of African Americans away from affiliating with traditional Black Christian denominations such as the Methodist and Baptist churches was not unique to the Nation of Islam. The spread of Islam among African Americans had been one of several new religious movements that emerged in urban areas during the early to mid twentieth century as alternatives to long-established Christian denominations who had—in some cases—actively discouraged African American southern migrants from becoming members. Religious communities such as the Mt. Sinai Holy Church of America Inc., United House of Prayer for all People, Church of God, Moorish Science Temple of America, and the Father Divine Peace Mission Movement reflect a few of the groups that emerged partially as a result of African American social dislocation during this time.[44] It is therefore likely that Fard was able to partially capitalize on the growing disillusionment with Christianity among southern-born African American migrants. Fard had posed Christianity as a religion for slaves that had been deliberately imposed on African Americans by whites for the purpose of reducing African American agency and self-awareness.[45]

Similarly, the early history of the NOI cannot be understood apart from the migration of hundreds of thousands of African Americans into northern cities from southern states during the early to mid-twentieth century. Many of the new adherents to the NOI consisted of entire families who had migrated in search of better employment and civil rights possibilities. Beynon found that "with less than half-a-dozen exceptions all were recent migrants from the rural South, the majority having come to Detroit from small communities in Virginia, South Carolina, Georgia, Alabama, and Mississippi."[46] Fard's teachings and religious instructions helped contextualize the experi-

ences of migrants that might have viewed their movement in starkly religious terms as a migration from slavery to freedom.

More recently, chroniclers of the NOI's initial development have raised questions surrounding the exact nature of Fard's contributions to the religious community. Michael Gomez points out that Fard was a functional illiterate. Given this evidence, the notion that Fard could have somehow managed to take passages from several other theological sources and systematically compiled them to produce the two works attributed to him in four years time seems unlikely. Instead, Gomez suggests that Elijah Muhammad and others were instrumental in compiling many of the basic theological texts and ideas that shaped and defined the Nation of Islam. With respect to the *Secret Ritual of the Nation of Islam* and *Teaching For the Lost-Found Nation of Islam in a Mathematical Way*, he states, "It is therefore possible, and certainly plausible, that Elijah Muhammad had more of a hand in fashioning the two documents than previously understood."[47] Likewise, the view that the NOI's complex array of rituals, symbols, and theology spoke to the view that America, as a predominantly Christian nation, could not provide a vehicle for obtaining African American political or social rights cannot be understood apart from a discussion of Elijah Muhammad's early life experiences.

The politics surrounding race in early twentieth century America seems to have clearly informed how Americans understood religion, specifically Christianity, at the time. By the time Elijah Muhammad had left the city of Macon for Detroit in 1923, the Ku Klux Klan had remerged across the country on calls for white Christian morality, temperance, and anti-immigrant sentiment. Unlike its traditional image as a rural, illiterate, violence-prone outfit, the second-rise of the "Invisible Empire" was a distinctly urban institution ostensibly directed toward charity. Moreover, the Klan quickly became the largest nativist fraternal organization in American history by promoting ideas of fundamentalist Protestantism, morality, patriotism, education, and anti-immigrant policy. Walter White, an assistant secretary for the National Association for the Advancement of Colored People (NAACP) in 1929, observed that southern white evangelical protestant preachers were at the forefront of the Ku Klux Klan's post-WWI organization. According to White, "Protestantism in the lynching states. . . . " nominally supported acts such as lynching and peonage given its failure to condemn the practices.[48]

Similarly, the Klan's appropriation of Christian symbols and reputation for racial violence could explain why Elijah Muhammad viewed the religion and the subordination of African American life as mutually reinforcing institutions. Edward Blum, a historian of race and religion in the U.S., commented on the period by noting that "Images of a white Christ, the rituals of the lynch mob, and the theologies of white supremacists all worked together in the late nineteenth and early twentieth centuries to sanctify the racial violence that was exploding all over the nation."[49] Drawing a connection be-

tween the Christian cross, the sacrifice of Jesus Christ, and the practice of lynching, Elijah Muhammad suggested, "This is the very way that they lynch so-called Negroes. . . . They burn the cross as warnings to you even though the cross, they claim, is sacred among their religious believers."[50]

Muhammad further reinforced the basic gist of his message that a society and government dominated by Christians had not protected the life and civil liberties of African Americans through the production of religious motif. For example, blackboards in NOI temples across the country displayed "the American flag, the Christian cross, and a black man hanging by his neck from a tree," on one side, and the words freedom, justice, and equality, along with the Islamic star and crescent, on the other.[51] In lieu of the federal government's failure to protect African American life, and a passive acceptance, if not general apathy, in American society toward practices that subordinated African American life, the NOI promoted the idea of a separate Islamic state, and racial separation in social, political, and economic affairs as immediate solutions to America's racial conflicts.

Likewise, certain historical developments undoubtedly influenced Elijah Muhammad's ability to shape the direction of the NOI. In June 1934, after a series of arrests in Detroit and Chicago, Fard mysteriously disappeared.[52] Although Fard had led the NOI for little more than three years, his disappearance only contributed to the aura of mystery surrounding his persona in the NOI. Nevertheless, despite considerable doubt existing as to whether or not Fard actually considered himself to be the manifestation of Allah (or God) in America, NOI members began stating that Allah had appeared in the person of Fard at the bequest of Elijah Muhammad after his disappearance.[53] Still, Fard's contribution to the development of the NOI's rituals and theology cannot be overstated.

Indeed, one of Fard's most enduring contributions to the NOI—and the point of departure from which the NOI differs from several of its ideological predecessors—was his staunch cultural critique of American society and politics. The University of Islam, an elementary and grade school, emerged in response to Fard's belief that NOI children would not receive an adequate understanding of their history and culture in American public schools. The NOI ran into legal conflicts with the local school board in Chicago when Fard decided to place NOI children into the University of Islam as an alternative to the local schools. Eventually, the problem resolved itself when the NOI restructured the curriculum of the University of Islam around that of the Chicago public school system.[54] Similarly, Fard's critique of American social life was not limited to problems he had with Christianity and public schools. He introduced terms like "tricknology," to describe and define what he saw as the ethical deficiencies of American technological advances.[55]

One of the more intriguing outgrowths of the NOI's interpretation of American race relations was its approach toward American politics. NOI

members viewed themselves as citizens of Islam, and not the U.S. Also, the NOI embraced a policy that prohibited members from voting and eschewed political participation of any sort. In so far as African Americans' concern with politics and civil rights, Elijah Muhammad was ". . . skeptical that whites would ever extend to blacks, in theory or in practice, the same rights that they exercised themselves."[56] In time, the onset of hardships such as police beatings, raids, and arrests of NOI members, and federal designs to publicly humiliate NOI officials, would reveal the practicality of attempting to rigidly adhere to this policy.

In the four decades following its emergence, the NOI struggled to negotiate its existence in American society, as the federal government appeared to increasingly subordinate the religious freedoms of NOI members to its national security concerns. During the first half of the 1930s, however, few if any of these problems would have been given any serious reflection as the government turned its attention to restarting a national economy in ruins. For the time being, the NOI included a little known group of African American working class and unemployed families living in Paradise Valley, Detroit. Beginning in 1934, a series of arrests, conflicts with local institutions, and dubious relationships quickly brought the NOI to the attention of federal authorities. Relying solely on their belief in Islam and the moral legitimacy of their religious community, NOI members would find themselves attempting to defend their religious freedoms in court like Garvey had done almost a decade earlier.[57]

NOTES

1. Thomas C. Reeves, *Twentieth-Century America: A Brief History* (New York: Oxford University Press, 2000), 3, 11–12.

2. Ibid., 21–23.

3. Milton C. Sernett, *Bound for the Promised Land: African American Religion and the Great Migration* (Durham: Duke University Press, 1997), 38–39.

4. Ibid., 58.

5. Claude Andrew Clegg III, *An Original Man: The Life and Times of Elijah Muhammad* (New York: St. Martin's Press, 1997), 13, 14–15.

6. Ibid., 6; Turner, *Islam in the African-American Experience*, 151. Although Turner gives Bold Springs, Georgia, as the birthplace for Elijah Muhammad, Clegg's assertion that Muhammad was born in Sandersville is based on census data and other primary sources.

7. Evanzz, *The Messenger*, 38–40.

8. Clegg, *An Original Man*, 13; "Twelve Camps Are Under Fire," *The Atlanta Constitution*, 30 June, 1908, 11; "Wardens Took Lessee's Money," *The Atlanta Constitution*, 30 July, 1908, 1; "Brick Company to Show Cause," *The Atlanta Constitution*, August 18, 1908, 3. For more on convict leasing in Georgia, see "How Long Shall These Things Be," *The Christian Recorder*, December 19, 1895; Mary E. Church Terrell, "The Convict Lease System and the Chain Gangs," in *Unpublished Papers of Mary Church Terrell* (Alexandria, VA: Alexander Street Press, 2004), 190–191; "For Chain Gang Reform," *Bradford County Telegraph* (Starke, Florida), November 22, 1895. The fact that these two companies used and profited from conscripted labor might be the basis for an erroneous 1961 report by the California State Senate Fact-Finding Subcommittee on Un-American Activities claiming that Elijah Muhammad

served prisons terms for vagrancy in his youth, see Muhammad, *Message to the Blackman*, 177–178.

9. Tessa M. Gorman, "Back on the Chain Gang: Why the Eight Amendment and the History of Slavery Proscribe the Resurgence of Chain Gangs," *California Law Review* 85, no. 2 (March, 1997): 448–449, 451, 477; Martha A. Meyers, "Inequality and the Punishment of Minor Offenders in the Early 20th Century," Law and Society 27, no. 2 (1993): 322. For a more extensive look into the evolution of convict leasing and its impact on African American life and the growth of American industry following the Civil War, see Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008).

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28. José V. Pimienta-Bey, *Othello's Children in the "New World": Moorish History & Identity in the African American Experience* (Bloomington, IN: 1st Books Library, 2002), 201.

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31. Gomez, *Black Crescent*, 219; Clifton E. Marsh, *From Black Muslims to Muslims: The Transition from Separatism to Islam, 1930–1980* (Metuchen: The Scarecrow Press, Inc., 1984), 45.

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33. Elijah Muhammad, *Message to the Blackman in America* (Chicago, IL: Muhammad's Temple No. 2, reprint; orig. pub, 1965), 31.

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36. Beynon, "The Voodoo Cult Among Negro Migrants in Detroit," *The American Journal of Sociology* 43, no. 6 (May, 1938): 895.

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45. Muhammad, *Message to the Blackman*, 17, 18.

46. Beynon, "The Voodoo Cult," 897.

47. Gomez, *Black Crescent*, 284, 296–297, 310.

48. Walter White, *Rope and Faggot: A Biography of Judge Lynch* (Salem, NH: Ayer Company, Publishers, Inc., 1969), 40, 46–47.

49. Edward J. Blum, *W. E. B. Du Bois: American Prophet* (Philadelphia, PA: University of Pennsylvania Press, 2007), 145. Blum's work methodically demonstrates how political and artistic activists such as Du Bois appropriated the image of a Black Christ to question fundamental inequity in class and race relationships in American society.

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Chapter Two

Fighting in the Courts

Early NOI Legal Defense

In the time that elapsed between Fard Muhammad's initial appearance in Paradise Valley, Detroit, Michigan, and Elijah Muhammad's eventual imprisonment over a decade later, the NOI, originally called the Allah Temple of Islam, went through a transitional period of organizational instability and intense public ridicule behind its theological teachings and ritualistic practices.[1] On the morning of November 21, 1932, Robert Karriem Harris, a member of the Allah Temple of Islam's (ATI) Detroit temple and owner of a boarding house, asked his roomer, forty year old James J. Smith, if he would agree to be a human sacrifice for the fate of the world. Perhaps taking his question in jest, Smith went along and agreed to place himself upon the homemade altar that Harris had built for the occasion. At precisely 9:00 a.m. an alarm clock rang signaling events would be getting underway, whereupon Harris stepped forward and stabbed his roomer in the heart with a table knife. His actions would immediately bring Detroit's African American community into a startling awareness of the existence and activities of the ATI.[2]

The graphic and brutal details surrounding Harris's crime were shocking in nature and became detailed in numerous African American newspapers throughout the Midwest. Besides stabbing Smith with a table knife, Harris had smashed his skull in with the rear axle of an automobile to be certain of Smith's death. He told his arresting officers that Smith's murder was the work of destiny and had been foretold 1,500 years earlier. In the moments leading up to the events, he had forced his wife, two children, and twelve witnesses to watch the entire ritual. Harris, who migrated with his family from Memphis to Detroit in 1930, had fallen on hard times. Nevertheless, Detroit police were surprised to discover that Harris had planned to kill two

social workers, Gladys Smith and Margaret Adele, for discontinuing his family's welfare payments.[3]

For various reasons, city officials were uncertain as to what factors ultimately caused Harris to commit murder. From the beginning of events, there was no attempt by law enforcement and local newspapers to determine whether Harris was a member of the Moorish Science Temple of America or the ATI, as they appear to have grouped all African American Muslim communities residing in Detroit together under the terms "voodoo" and "cult." Also, it was not altogether clear that Harris had planned to kill Smith and Adele, the two social workers, for financial reasons. Detroit police had gathered evidence that Fard Muhammad encouraged his members to become economically self-sustaining, and Harris might have interpreted welfare as a hindrance to the development of his ethno-religious identity within the NOI. It is known, for example, that Harris viewed each of the workers in religious terms, describing them as "no good Christians." Regardless of what factors city officials thought contributed to Harris's actions, the murder proved a public fiasco for the ATI.[4]

Local residents and public officials converged to purge Detroit of what they perceived to be a foreign, predatory, and all too corrupting religious influence. According to one prominent African American newspaper, "A Concentrated effort on the part of ministers, organizations and individuals has been launched to wipe out the evil influence of the 'religious cult . . . of voodooism and Mohammedanism.'"[5] The group became publicly known as a voodoo cult and resulted in the arrests of its two most senior members, Fard Muhammad and Ugan Ali, his chief minister, who were placed in the psychopathic wards at the Detroit Receiving Hospital. Moreover, the Detroit police formed a special unit whose sole purpose was to disband the ATI.[6]

For its part, the response by Fard's followers was immediate. Lillian Ali, Ugan Ali's wife, led over 500 members in protest of Harris's detention at the downtown courthouse for nearly a week. After it became clear that Fard Muhammad and Ugan Ali would be held for an indefinite amount of time, Elijah Muhammad led over 200 members in protest for an all day sit-in on the steps of the courthouse.[7]

Surprisingly, a legal resolution to the situation never emerged because the case against Fard, Ali, and Harris never went to trial. While court psychiatrists declared Harris too incompetent to stand trial, court officials informed Fard and Ali that they would be charged as accessories to murder if they did not disband the ATI and leave the city. Police had uncovered circumstantial evidence linking Fard's teachings to Harris's belief that he would receive salvation if he sacrificed four "devils" for Islam. Clearly, Fard and Ali could have fought those charges, and, in fact, had suggested at one point that Harris had misinterpreted their teachings. Instead, both Fard and Ali agreed to disband the ATI and leave Detroit in return for charges being dropped. While

Fard technically disbanded the ATI because of his deal with the police and the intense pressure and public ridicule endured by ATI members in Detroit, he actually kept the religious community together by renaming the group the Lost-Found Nation of Islam, or NOI, in early 1933[8]

The next major conflict between NOI members and local authorities occurred in 1934, following reports by the Detroit public school board that members were pulling their children out of the city's public schools. Not only had Fard returned to Detroit, but, believing that the public school system did not provide an adequate curriculum for educating and socializing Muslim youth, he had ordered NOI members to begin bringing their children to the NOI's Detroit mosque for schooling at the NOI's University of Islam. In May 1933, Fard was jailed for disturbing the peace due to his propagation efforts and forced to leave Detroit for a second, and final, time.[9]

Approximately one year later, in the spring of 1934, Elijah Muhammad and several of his associates found themselves under similar circumstances. A police raid on the NOI's Detroit temples led to Muhammad's arrest on charges of contributing to the delinquency of a minor and the closing of the NOI's schools throughout the city. He was released a short time thereafter; but, in a show of protest to what he considered to be the city's blatant "religious persecution," of the group, Elijah Muhammad and 500 NOI members marched on the local police station. Predictably, a riot broke out between the police and NOI members, resulting in over a dozen police officers being injured and the arrests of multiple NOI members, including Elijah Muhammad. Fearing that another riot might occur after NOI members began stoning the jail where Muhammad and several other members were kept, the presiding judge released Muhammad and the others from prison.[10]

Given the fact that the NOI's initial dispute with the school board was civil in nature, it would have been logical—if not intuitive—for the NOI to have sought assistance from civil rights groups and organizations such as the NAACP, National Urban League (NUL), and American Civil Liberties Union (ACLU). Indeed, the NOI would have found an empathetic hearing from at least one well-known NAACP member of the time, W. E. B. Du Bois. In a special issue of the *Journal of Negro Education* published in July 1935 and focusing on the question of separate education for African Americans, Du Bois penned an article entitled, "Does the Negro Need Separate Schools?" where he suggested that separate schools were needed " . . . just so far as they are necessary for the proper education of the Negro race."[11] What Du Bois might have thought about groups such as the NOI is subject to speculation, but there were other reasons why the NOI should have been able to receive broad based support from African American civil rights organizations. At least since the early 1920s, the NAACP had shown that it could marshal the financial resources, legal skills, and public support to legally defend African Americans where questions of civil rights or liberties were involved. The

NOI certainly would have benefitted from the legal assistance that could come from such a relationship. For the next eight years the group would consistently fail to provide its members with a robust legal defense of their civil liberties. Despite these potentially favorable variables, a grand alliance between the NOI and groups such as the NAACP never emerged.

On the one hand, there were practical reasons why this did not happen. The NAACP was in the process of waging a national campaign to end segregation in public schools, public accommodations, and public transportation. Supporting a group that wanted to build separate schools would run counter to the NAACP's direction and priorities. Whatever advice or ideas he had on the value of separate schooling for African Americans would have fallen on deaf ears.[12]

On the other hand, there were deeper, more ethno-religious reasons why Elijah Muhammad and the NOI did not and could not seek support from the NAACP. With respect to their national identity, NOI members considered themselves Afro-Asiatics and fiercely objected to being referred to as "colored."[13] Islam was critical to both the religious and political identity of NOI members. Also, because the NOI viewed its temples as sacred spaces and the bodies of its membership as divine, the NOI considered the use of force in defending its temples and membership as a moral obligation and civil responsibility. In 1935, for example, a fight broke out in court between the NOI and police after a court bailiff shoved a female member of the NOI. Although a court officer lost his life in the melee that ensued and several NOI members were arrested, a judge ordered all charges dropped against the NOI for fear that any punishment resulting from the encounter might give way to a riot.[14]

Conversely, the evidence clearly suggests that local African American civil rights groups perceived the development of Islam among African Americans in Detroit as a social and ethical abnormality and had not forgotten about the gruesome murder of James Smith some two years prior. Leaders from several African American social, civic, and political organizations, including the local chapters of the NAACP and NUL, signed a resolution objecting to the presence of Islam and the NOI in their communities in response to the fracas between the NOI and Detroit police. In the end, neither the NOI's ongoing conflict with police, nor its inability and unwillingness to forge relationships with civil rights organizations played out in its favor. In an ill-advised move that would be repeated by members throughout much of the NOI's early history, Muhammad acted as his own counsel. On April 13, 1934, a judge found him guilty of contributing to the delinquency of a minor and ordered that NOI's schools in Detroit remain closed. Because it was his first offense, he would not have to serve jail time.[15]

Nevertheless, the worst of Muhammad's problems were yet to come. Immediately following Fard Muhammad's disappearance, Elijah Muhammad faced both internal and external challenges to his authority of the NOI. An

altercation similar to the sacrificial slaying in late 1932 took place five years later, causing a public outcry over the two revelations and leading over 500 families in Chicago to leave the religious community. On January 18, 1937, Verlen McQueen "Ali" a member of the NOI's temple in Detroit attempted to sacrifice his wife and daughter, both of whom had earlier refused to convert to the group, in an effort to dispel any doubts regarding the sincerity of his religious beliefs. By 1937, membership in the NOI had declined four-fold to approximately 5,000 members. In fear for his life, Muhammad moved between temples frequently, stopping first in Chicago, then Madison, Milwaukee, and finally Washington, D.C. Incidentally, it was most likely during his stay in the nation's capitol, away from the distractions awaiting him in the Midwest, that Muhammad brought together the disparate theological teachings of Fard Muhammad into one coherent body.[16]

Fard Muhammad's abrupt departure also left Elijah Muhammad in constant conflict with other religious competitors who had designs on leading the NOI. Specifically, Muhammad's claim that Fard chose him to lead the NOI following his departure and that Fard was Allah in person led to a rift developing between him and his younger brother Kallat. Believing that his brother had corrupted the teachings of Master W. D. Fard for personal gain, Kallat left the NOI and formed a new organization based on Fard's teachings called the Society for the Development of Our Own. While Kallat's departure further depleted the membership of the NOI, it was his appropriation of NOI religious symbols and financial backing from pro-Japanese propagandists that led the Justice Department to assert that Japanese agent-saboteurs had created, funded, and organized both organizations. Considering the NOI's physical confrontations with law enforcement, the theology inspired sacrificial slayings of its members, its poor public relations with African American civil rights organizations, and the Justice Department's investigation into the movement, the federal government's desire to have the NOI out of public life is not altogether surprising.[17]

In the spring of 1942, the Justice Department—using intelligence reports gleamed from informants working for the Federal Bureau of Investigation—launched a series of raids and arrests intent on silencing the NOI's criticism and objection to fighting in World War II. In April, a district grand jury in Washington, D. C., indicted Joseph Nipper, John W. Miller, and Harry M. Craighead for violating the Selective Service Act of 1940. Nipper, Miller, and Craighead were all members of the NOI's mosque in Washington, D. C., often frequented by Elijah Muhammad, who federal agents arrested a few weeks later on May 8, for failing to register for the draft. Muhammad's bail was set at $5,000, and he continued to sit in jail until his wife posted his bond some three months later.[18]

Interestingly, Elijah Muhammad objected to being drafted into the U.S. Armed Forces on two grounds: first, he argued that his religious beliefs

opposed participating in wars that were not in the interests of Muslims; second, he suggested that at forty-five years old, he was no longer eligible for the draft. While the reasoning behind his initial grounds for objecting to the draft was open to debate, Muhammad's second assertion for not registering with selective service appears to have been wholly incorrect. Although the amended version of the Selective Training and Service Act of 1940 only made males ages eighteen to forty-four eligible for being drafted, it required all males ages eighteen to sixty-five to register with their local draft boards. This fact left Elijah Muhammad's religious convictions as the only grounds upon which he could effectively object to being drafted. Like several other NOI members under arrest for draft evasion, Muhammad initially refused his right to an attorney, but would soon reconsider that decision. He settled on Richard E. Westbrooks, an attorney out of Chicago, who—despite all appearances to the contrary—was an arguably poor choice of legal representation for Muhammad to have retained.[19]

In hiring Richard Westbrooks as his defense counsel, Elijah Muhammad must have thought that he would be getting one of the best lawyers that money could buy. To his credit, Westbrooks had a well-deserved reputation as a considerate, open minded, highly regarded, and very successful attorney in Chicago. For starters, Westbrooks was a founding member and former president of the Cook County Bar Association, the African American counterpart to the racially segregated and all-white Chicago Bar Association. The association took an active role in informing African Americans of their civil rights, recommending quality legal representation, and evaluating local judges on the basis of their protection of African American civil rights. In 1920, during a groundswell of African American political activism in Chicago, he ran for alderman of Chicago's second ward. A graduate of Chicago's John Marshall School of Law, Westbrooks went on to build a law firm that became known for its willingness to employ highly skilled African American female lawyers. But it was his success in arguing a case involving discrimination in public transportation on behalf of Congressman Arthur W. Mitchell before the U.S. Supreme Court in 1938 that won him the most praise from his peers.[20]

Unfortunately, none of Westbrooks' prior accomplishments translated into any meaningful outcomes for the Muslims on trial in the summer and fall of 1942. To begin with, the evidence suggests that Westbrooks was not trained in civil liberties law. In fact, his primary means of defending Muhammad consisted of pursuing moral arguments about the nature of Islam as a religion, instead of citing concrete case law or legal precedent upon which Muhammad could gain his freedom. The Selective Training and Service Act specifically stated that those citizens who conscientiously objected to serving in war could be put to works of "national importance," as an alternative to going to prison. That stipulation had worked well for Anabaptist-Mennonites

who persistently lobbied for such a provision in the draft law. Although works of "national importance," included providing unpaid labor such as ditch-digging, road and bridge repair, and serving as human test subjects for government experiments, it does not appear that Muhammad and his co-defendants were ever informed of this alternative. Given Muhammad's subsequent public statements against supporting man-made wars in any form—especially when similar predicaments befell his son and Muhammad Ali—it is highly unlikely that he would have accepted such an offer if one had become available. Westbrooks also fell ill during Muhammad's trial and failed to appear in court on at least one occasion.[21]

But, perhaps the most obvious reason that Westbrooks was not a good choice of attorney is that a conflict of interest might have existed between Westbrooks and his ability to represent NOI members. During the early to mid-1920s, at the height of the "Garvey Must Go" campaign, Westbrooks served as legal counsel to the *Chicago Defender*. In its denouncement of Garvey, the newspaper had not been reluctant in issuing scandalous statements about the UNIA, and became the subject of a libel suit brought by Garvey in 1921. As legal counsel to the *Chicago Defender*, it can be reasonably assumed that Westbrooks provided some advice on the type of material that would be appropriate to publish on Garvey and the UNIA both before and after the lawsuit. Robert Abbot, editor and publisher of the *Chicago Defender* was one of eight signatories to a letter that sought the assistance of the U.S. Attorney General in disrupting and disbanding the UNIA. Moreover, Westbrooks served as the Republic of Liberia's legal representative in Chicago for more than two decades, beginning in the mid-1920s. He was still serving in that role when he took on Muhammad's case. As Liberia's representative, he was responsible for rejecting any visa applications put forward by former Garvey members in the Midwest. Unless former Garveyites signed a statement denouncing Garvey and the UNIA, they could not travel abroad to Liberia. Suffice it to say, for the better part of a decade, Westbrooks was in the employ of anti-Garveyite interests. It is clear that many NOI members formerly belonged to the UNIA, and there is also evidence to suggest that Elijah Muhammad might have held the rank of officer within the movement.[22]

The Justice Department's arrest and imprisonment of NOI members continued unabated throughout the summer of 1942. One week following Muhammad's arrest in May 1942, a federal judge in Chicago gave thrity-four year old NOI member Mose Russom the maximum sentence of five years imprisonment for failing to register with selective service. On July 14, a federal grand jury in Milwaukee, Wisconsin indicted Sultan Mohammed, the resident minister for the NOI temple in the city, on charges of sedition and failing to register with his local draft board. Federal agents arrested Mohammed several weeks earlier in Washington, D. C., after he attempted to

visit Elijah Muhammad in prison. In August, Benjamin Elijah X and William X, both members of the NOI's temple in Washington, D. C., were arraigned on charges of draft evasion as well. If the summer months had appeared difficult for NOI members in the nation's capitol, the following fall proved that NOI members elsewhere were not exempt from the FBI's overall objectives.[23]

On September 20, 1942, the FBI launched a nationwide series of raids on African American social and religious groups it believed were front organizations for pro-Japanese interests. In all, the FBI rounded up over eighty African American men and women on charges ranging from sedition to draft evasion in the month alone, with NOI members accounting for the overwhelming majority of those arrested. In addition to the NOI, African Americans belonging to the Peace Movement of Ethiopia, Brotherhood of Liberty for Black People of America, and the Colored American National Organization were included in the FBI's operation. By the end of the month, a federal grand jury in Chicago had indicted thirty-eight NOI members on charges of violating the Selective Service Act. Of these initial thirty-eight NOI members, thirty-one plead guilty and received sentences of three years for failing to register for the draft. Elijah Muhammad's son, Emanuel, received the maximum penalty of five years, while only six members plead innocent to the charges. After being questioned in court on their deliberate refusal to sign up for the draft, each of these thirty-two members stepped forward and replied that they had already "registered with Allah."[24] Either for religious reasons or perhaps believing that their convictions were forgone conclusions, the six, Sam Davis, Leamon Thornton, Raymond Sharieff, Frank Eskridge, Farroz Jordan, and George Hawkins, refused lawyers and were sentenced to three years each in federal prison. Although draft evasion trials against NOI members continued on into the following year, the government was not able to link the NOI with pro-Japanese sentiment that represented a threat to the nation's national security and eventually dropped its sedition charges against the group.[25]

Men in the NOI responded to their harassment, arrests and imprisonment for not registering with their local draft boards by citing their belief in Islam as both explanation and justification for their actions, protesting what they viewed as federal persecution of their religious beliefs. After being accused in federal court of not carrying his draft card, Frank Eskridge responded, "Allah is my keeper and Allah has my card."[26] Similarly, Benjamin Elijah X told U.S. Commissioner Needham C. Turnage that he had "registered with Islam back in 1938," and was "required by the Nation of Islam not to register with any other nation."[27] Explaining to a federal judge why, as a Muslim, he opposed going to war, Mose Russom stated, "My people have been persecuted here and I feel I owe nothing to this country."[28] If any doubt as to the reason for their arrests lingered in the minds of NOI members, it all but

disappeared when Elijah Muhammad's jailers reportedly told him that his imprisonment was the direct work of J. Edgar Hoover and that the government planned on holding him and his followers until the end of the war. Connecting the circumstance of men in the NOI at that time to that of Fard in 1934, Muhammad later recalled, "Each time he was arrested, he sent for me so that I might see and learn the price of Truth for us, the so-called American Negroes . . . . We followed in his footsteps, suffering the same persecution."[29]

Viewed as a form of religious persecution, going to prison for failing to register with selective service became one means of validating the religious sincerity of NOI members. It is generally accepted among chroniclers of the NOI's history, for example, that Elijah Muhammad's acceptance of imprisonment for his religious beliefs was the final and determining factor in obtaining the loyalty and following of weary NOI members who had faced constant attacks on their religious beliefs since 1934. All things considered, there is perhaps a bit of irony in the fact that Elijah Muhammad and NOI members would use their imprisonment as a means of shedding light on what they viewed as social injustice. The NOI would become highly critical of African American civil rights organizations when this type of initiative became a seminal non-violent direct action technique in the Civil Rights Movement of the sixties. The strategy proved to be less favorable for Muhammad than it was for other NOI members in later years, however, because the NOI enjoyed arguably less public support among African American social and civil rights organizations at the time than it would in years to come. By 1966, when Muhammad Ali refused to register with his local draft board, public opinion surrounding the NOI in African American communities would be significantly different.

The NOI's initial court tactics and public relations in African American communities are important considerations when looking at the ongoing legal struggles of the NOI. Although the literal interpretation of NOI religious doctrine by two members led to one murder and the potential murder of several others, Islam as a religion and the NOI as a religious community were collectively held responsible for the tragedy. Essentially, the incidents were not considered in isolation, but viewed as symptomatic of a problem arising from the African American encounter with Islam. The resistance shown by law enforcement and African American civil rights organizations to understanding the African American conversion to Islam outside of a context of social pathology and ritualistic killings impacted the NOI's ability to exercise its civil liberties in other areas, such as developing independent schools for NOI children, and resulted in calls and petitions for the NOI to disband. Given these realities, the decision by NOI members to legally defend their civil liberties through physical confrontation and referencing their Islamic beliefs does not appear to have significantly advanced their ability to acquire

social justice in the courts. In fact, the federal government's decision to shadow and arrest massive numbers of NOI members in the fall of 1942, suggests that the NOI's initial interaction with the legal system might have retarded their legal and social initiatives. When NOI members did opt for alternative approaches to defending their civil liberties, such as hiring paid civil defense attorneys, their choice of legal representation seems not to have worked in their favor as well. Considering these significant challenges and setbacks, an intriguing aspect of the NOI's struggle to defend the civil liberties of its members is how the religious community managed to come out of this difficult period intact. Indeed, the story of how the NOI maintained and exercised its collective religious identity and economic viability during its initial years would be critical to understanding the shape and direction of the NOI's public social protest initiatives in later years.

NOTES

1. Elijah Muhammad biographer Claude A. Clegg has suggested that, "On the whole, the decade between 1932 and 1942 is most memorable for the Muslims as a time of destructive unity, overly competitive leadership, law enforcement harassment, and organizational perjury." See Clegg, *An Original Man*, 82.
2. Erdmann Doane Beynon, "The Voodoo Cult Among Negro Migrants in Detroit," *The American Journal of Sociology* 43 (1938): 903.
3. "Find Cult Killer's Weapons," *Chicago Defender*, December 3, 1932, p. 3; "Voodoo Rites of the Jungles in Odd Contrasts with Background of City," *Chicago Defender*, December 10, 1932, p. 9; "Probe Weird Rites of Detroit Voodoo Cult," *Chicago Defender*, December 3, 1932, p. 4, col. 4.
4. Beynon, "The Voodoo Cult," 899; "Detroit Voodoo Cult," p. 4, col. 4.
5. Beynon, "Detroit Voodoo Cult," p. 1.
6. Evanzz, *The Messenger*, 88–89
7. Ibid.; "Detroit Voodoo Cult," p. 4, col. 4.
8. Muhammad, *Message to the Blackman*, 24; Evanzz, *The Messenger*, 90, 92.
9. Clegg, *An Original Man*, 33–34.
10. "Nation of Islam," SAC Letter No. 55–43, June 26, 1955, 37 (Nation of Islam FBI file).
11. W. E. B. Du Bois, "Does the Negro Need Separate Schools?" *Journal of Negro Education* 4, no. 3 (July, 1935): 328.
12. Rawn James, Jr., *Root and Branch: Charles Hamilton Houston, Thurgood Marshall, and the Struggle to End Segregation* (New York: Bloomsbury Press, 2010), 65–66.
13. Evanzz, *The Messenger*, 90.
14. Clegg, *An Original Man*, 39.
15. Evanzz, *The Messenger*, 98–99.
16. Ibid., 121–122; Beynon, "The Voodoo Cult," 903–904.
17. Gomez, *Black Crescent*, 310; Evanzz, *The Messenger*, 112, 122, 141.
18. "Jail Another Moslem Who Dodged Draft," *Chicago Defender*, September 05, 1942, p. 8, col. 7; "Hold 2 Men for Evading Draft Law," *Chicago Defender*, April 11, 1942, p. 7, col. 1.
19. Clegg, *An Original Man*, 86; Eric Foner and John A. Garraty, eds., *The Reader's Companion to American History* (Boston: Houghton Mifflin Company, 1991) 215.
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Chapter Three

Women, Domestic Work, and Social Legitimacy in the Early NOI

The manner in which the NOI was able to maintain its organizational integrity while weathering challenges to its civil liberties during its initial years is a critical issue in evaluating the NOI's struggle to protect its civil liberties. Because of their obligation as ministers responsible for publicly delivering Elijah Muhammad's message or their role as men in a society that saw several consecutive military drafts, NOI men became the principal targets of government efforts to suppress or otherwise dispute the civil liberties of NOI members. As this chapter suggests, the mass arrests of NOI members in the summer and fall of 1942 on sedition and draft evasion charges most clearly demonstrate this fact.

Even so, while men might have controlled administrative posts within the NOI, they had little control over the organizational infrastructure that both dictated and contextualized the everyday religious experiences of women in NOI. This chapter contends that in terms of propagation, pedagogy, and socioeconomic empowerment, domestic work served as the key organizational principle that characterized the early religious experience of NOI women. Moreover, the chapter implies that women became critical to the institutional viability and social legitimacy of the NOI during periods of instability precisely because the organization's men were the principal targets of dissident, malcontent, and local and federal government attempts to disrupt or disband the group.

The familiar story of Wallace Fard's appearance in Paradise Valley, Detroit is instructive in understanding the initial encounter of African American women with the teachings of the Nation of Islam. According to one of the Nation's first converts:

> He came first to our houses selling raincoats, and then afterwards silks. In this way he could get into the people's houses, for every woman was eager to see the nice things the peddlers had for sale. He told us that the silks he carried were the same kind that our people used in their home country and that he had come from there.[1]

From its very beginnings, the Nation of Islam tied the propagation of its ethno-religious identity and politics of economic self-sufficiency to its courting of African American women. Fard's use of material goods as a means of gaining entrance into the company of African American women in Paradise Valley may have resonated with their economic conditions and social anxieties as domestic workers. Even the wife of the assistant minister who would go on to lead the NOI for over four decades, Clara Muhammad, was no exception. When Fard met her and her husband Elijah in 1931, she was both a housewife and domestic worker. Likewise, the possibility that many of the African American women that Fard encountered during his propagation were most likely domestic workers is a significant point of departure for discussing the early economic and political organization of the Nation of Islam.[2]

NOI propagation to domestic workers in the 1930s complemented attempts by African American civil rights organizations at the time to resolve problems emanating from the social status of African American domestic workers. Groups such as the NOI, individual activists like Ella Baker and organizations such as the National Association for the Advancement of Colored People (NAACP) simultaneously challenged issues surrounding the stigma of domestic work while encouraging domestics to strengthen their collective consumer power by forming cooperative economic organizations. More importantly, the lived experience of African American female domestic workers would become a significant lens through which NOI women would interpret and apply NOI religious teachings in their everyday lives. The uniforms worn by women in the NOI not only addressed status issues facing domestic workers in the group, but also provided a means of projecting the NOI's religious identity at a time when its theological teachings led to constant internal strife among its members and external prosecution by federal agencies during World War II. While these uniforms briefly supported early NOI efforts to secure state recognition and civic freedoms on religious grounds, in a context where the male dominated theological teachings of the NOI came under such continuous ridicule, they could also redefine power relationships in the NOI along gender lines.

As part of the migration of African Americans out of the South and into the urban metropolises that constituted life in northern cities, Clara Muhammad undoubtedly witnessed the modification of domestic labor occurring in America at the beginning of the twentieth century. The widespread commercialization of technological innovations in automation altered the type of

work employers expected domestics to perform. Whereas the laundress and domestic performed two distinct jobs in the South following Reconstruction, the invention of the washing machine and the steam iron in the early twentieth century forced each figure to combine the previously separate services they offered. In one respect, the circumstance of domestic workers gave domestic workers a familiarity with new and emerging innovations in American technology, such as the washer, dryer, range-top oven, automobile, refrigerator, steam iron, and so forth. Because of her unique situation in American industry, the domestic worker was a firsthand witness to the modernization of the American home.[3]

Throughout the nineteenth century and the beginning of the twentieth, foreign-born immigrants from Europe typically dominated the domestic service profession in northern cities. Although African Americans would continue to provide the majority of domestic service work in southern cities such as New Orleans (where nearly 68.0 percent of employed African American women were domestic servants as late as 1940), the demographics of domestic work in the North increasingly reflected a largely African American and female labor force.[4] The migration of large numbers of African Americans northward coupled with a lack of occupational mobility due to employment discrimination led to a disproportionate number of African American women in domestic service jobs by 1920. In Chicago, the city that Clara Muhammad would eventually make her home, over 25,000 African American women held jobs as domestic servants, accounting for nearly half of the women in that profession.[5] Nationally, well over half of all employed African American women were engaged in service work from 1940 to as late as 1960. Nearly two-thirds of employed African American women were service workers in 1940 alone.[6]

Another vocational change that domestics encountered upon coming northward involved the location that they would perform their duties. As opposed to having domestic workers arrive at the beginning of the work day, complete the assigned chores and return home, Northern employers typically expected domestics to work several consecutive days while remaining "on call" at the employer's place of residence. It was common practice for domestics to leave their children in the care of relatives or trusted neighbors while at work. African American domestic workers referred to this undesirable situation as "living in," and appeared to have preferred "living out," as the most desired state of affairs.[7]

The benefits of living out were apparent to many women involved in domestic service. In addition to having an occupation that clearly terminated at the end of the day, living out afforded domestic workers the occasional opportunity to attend social events such as going to church on their days off. "Day-work," as it also came to be called, also meant that workers had the ability to change employers if working conditions were too extreme. By

1920, day-work became the principal arrangement between employers and domestic workers, most of whom were African American. Despite some clear benefits that day-work offered over live-in service, the primary occupational concerns that governed the day to day realities and circumstance of domestic work did not fall with the workers themselves. Indeed, the decision by Northern based employers to move to hiring live-out servants was principally motivated by their desire to distance themselves spatially from the increasing number of African Americans who came into northern cities during the first half of the twentieth century.[8]

The lived experience of domestics was fraught with exploitation and challenges. Perhaps the biggest difficulty facing domestics was the miserably low wages they received for their work. Job descriptions posted in classified advertisements poorly reflected and often times grossly understated the amount of work employers required of domestics once they arrived on site. Likewise, employers who personally hired African American domestics off city street corners lied about the type and duration of work required of domestics.[9] African American domestics who sought employment with professional agencies faired little better, as their narratives suggest that they received few or very difficult work assignments, and refused to support domestics in wage disputes between them and their employers.[10] Although attempts at professionalizing domestic work involved supporting the creation of household worker agencies, these businesses could be just as exploitive of worker pay as ordinary employers because they prohibited domestic workers from negotiating contracts on their own.[11] Moreover, the lack of a professional union to standardize wages and set acceptable working conditions only left domestics more vulnerable to having their labor exploited. Not surprisingly, in their survey of social attitudes toward African American prostitutes in the African American community, St. Claire Drake and Horace Cayton discovered that some African American prostitutes typically viewed themselves as having greater economic independence than domestic workers because—unlike domestic workers—prostitutes did not work for set wages, established their own prices and were not subject to seeing their earnings diminish as a result of an increased labor force.[12] For many African American domestics who could not secure decent work and wages through the classifieds, employment agencies, or personal references, standing on the street-corners near the business districts of large metropolitan cities, an option that came with its own unique challenges—became the last viable alternative.

The inability of African American domestics to gain entrance into unions that would standardize wages for their work in cities such as Chicago, Detroit, and Washington D. C., made a mockery of the concept of free labor, and helped to further an image of the domestic worker as a contemporary symbol of American slavery. Among other things, African Americans re-

ferred to the corners on which domestic workers waited to be picked up by prospective employers seeking their services as "slave markets," because white suburbanite women would encourage bidding wars between domestics to garner the most services for the lowest possible price.[13] A closer look at the popular image of the domestic worker during this time is revealing of the very precarious nature of her status in African American society.

Perhaps more than any other figure in African American literature or media of the period, the domestic worker most nearly resembled the infamous "plantation mammy" of slave times.[14] Commenting on the historical and lived connection between the two figures in the popular imagination of African Americans of the period, Carter G. Woodson noted:

> The Negroes of this country keenly resent any such thing as the mention of the Plantation Black Mammy, so dear to the hearts of those who believe in the traditions of the old South. Such a reminder of that low status of the race in the social order of the slave regime is considered a gross insult. There is in the life of the Negro, however, a vanishing figure whose name every one should mention with veneration. She was the all but beast of burden of the aristocratic slaveholder, and in freedom she continued at this hard labor as a bread winner of the family. This is the Negro washerwoman.[15]

Woodson's observation suggests that the status of the domestic worker rendered her visible as the historical linkage between the end of slavery and the beginning of the modern era for African American society in the North. His contention that the African American washerwoman was a "vanishing figure," however, is only partly true. As stated earlier, twentieth century technological innovations such as the washing machine forced the two distinct vocations of clothes laundering and domestic service into a common figure in African American life and imagination. David J. Sullivan, an African American market researcher, wrote an article in 1943 admonishing American corporations for reifying the image of African American women in this manner and advised, "Don't picture colored women as buxom-faced, grinning mammies and Aunt Jemimas. Negroes have no monopoly on size. Neither are they all laundresses, cooks, and domestic servants."[16] Moreover, in addition to the widespread reality that most African American domestics no longer worked from the autonomy of their own home, Northern employers required domestics to wear uniforms. On the most mundane level, the uniforms reified popular perceptions of domestic work as a job resembling slavery and represented a form of social boundaries that acutely defined the structures of power between domestic workers and their employers.

African American civil rights activist and organizations responded to the precarious condition of domestic servants by offering various strategies for resolving the typically exploitative relationship between employers and their employees. Robert C. Weaver, a former member of President Franklin

Roosevelt's Black Cabinet, implied that the problem actually rested with domestics themselves. In a journal article reviewing African American employment opportunities, Weaver suggested that domestics could vastly improve their circumstances through the use of household agencies that would professionalize service work.[17]

Ella Baker, a civic activist dedicated to grassroots community empowerment took an alternative approach to the issue. After reviewing the plight of domestic workers in the Bronx, New York, Baker coauthored an article advocating the use of unions among domestics as leverage to collectively bargain with employers. Unfortunately, Baker's solution ignored the reality that there existed no central institution among employers of domestics to present grievances or make uniform demands.[18] Politicians would have to enact legislation at the state and national levels to address the ongoing issues associated with domestic service.

Upon discovering that the Social Security Act of 1935 excluded agricultural, laundry, and domestic workers from receiving benefits and would leave a significant number of African Americans only eligible for its public assistance or welfare programs, the NAACP and Urban League supported legislation that would make the act more universal in the application of its benefits coverage of workers. Although these efforts were largely unsuccessful, the culmination of struggles by these and other groups led to the Civil Rights Act of 1964, ending discrimination in employment and making domestic workers eligible to receive social security benefits.[19] In its own way, the Nation of Islam's propagation to domestic workers during its infancy represents a form of civic activism in that it consciously challenged popular images associated with domestic workers, such as slavery, by redefining the significance of their work and dress within the context of Islam.[20]

The Nation of Islam's theology spoke to the circumstance of domestic workers like Clara Muhammad by altering the social terms upon which they engaged that reality. Specifically, the Nation of Islam's emphasis on having women study the attributes of domesticity revolutionized the nature of their experience because it lauded the ethical benefits of housework while encouraging women to break relations with their employers and work from home.[21] Indeed, the fact that these women participated in studying the attributes of housewifery—while supporting patriarchal structures already existent in the NOI—suggests the possibility that NOI women attempted to make the ethical teachings of the religious community practical in their everyday lives. Regardless of what the case might have been, through studying the ethics of domesticity from within the spaces of the Muslim-Girls-Training classes and working from within the spaces of their own homes, women in the Nation of Islam played a significant role in creating a religious identity that would provide an initial basis for the NOI's first major civil rights struggle.

In certain respects, the NOI's focus on housewifery paralleled various non-violent direct action techniques being employed by various African American civil rights groups. Specifically, housewives' leagues appear to have flourished among African American women in the 1930s. These leagues were principally concerned with developing housewifery as a source of agency, self-determination, and consumer activism within African American communities. Fard's appearance in Paradise Valley, propagating an economically and socially austere form of Islam coincided with the establishment of the Detroit Housewives' League in 1930. The first in a spate of housewives' leagues that emerged across the nation during this time, the Detroit league reached a membership of approximately 12,000 persons at its peak. Indeed, both the housewives' leagues and the NOI in its formative years pulled largely from the same demographic of working class African American women. And, although the NOI does not appear to have concerned itself with most of the primary interests of the leagues, such as consumer pricing, food quality, and hiring practices, their emergence in the early 1930s presented an initial model from which NOI members could draw on ideas such as cooperative economics.[22]

Fard's encounters in Paradise Valley are also significant in terms of what they reveal about the social dynamics of the Nation of Islam's propagation to African American women. It was not the last time that a minister in the Nation of Islam would court domestic workers in his "fishing" efforts. According to Malcolm X, the Nation of Islam chose Thursdays to approach African American women because domestic workers had that day off from work.[23] In addition, women in the Nation of Islam's Muslim-Girls-Training and General-Civilization-Class (MGT/GCC) took a culture and civilization course that taught sewing, cooking, and other aspects of housework on Thursday evenings.[24] The NOI's efforts at using Thursday as a time for targeting African American women in domestic service mirrored efforts by other civic organizations with similar programs. Domestics at the 137th Street Branch of the New York City YWCA held classes, support groups, and provided legislative information pertaining to domestic service at events called "Thursday Nighters."[25]

In addition to the propagatory efforts of early NOI members, there is structural and eyewitness evidence to support the contention that African American female domestics were among the NOI's early adherents and played a significant role in the development of the religious community. Malcolm X, a prominent minister in the NOI who eventually became the group's national spokesperson, acknowledged firsthand the degree to which domestic workers contributed to the early advancement of the NOI and adjusted his outreach efforts to reflect that reality. In a sequence of events somewhat resembling Fard's encounters in Paradise Valley, Malcolm X had travelled to Hartford, Connecticut to initiate NOI propaganda among the

city's African American population in the mid-1950s. For the past two decades, African Americans had increasingly come to account for a considerable portion of domestic workers in Hartford.[26] Significantly, it was an African American domestic worker named Rosalee Bey who was responsible for establishing Temple No. 15 in that city by 1955.[27] When Malcolm X had come to evaluate the prospects of organizing a temple in Hartford, Rosalee Bey had assembled, " . . . in her housing project apartment about fifteen of the maids, cooks, chauffeurs, and house men who worked for the Hartford-area white people."[28] Headed by Thomas X Bridges, with Grace X Brooks serving as the lieutenant of the MGT unit, the temple in Hartford reached a membership of approximately 110 persons within two years.[29]

A social institution connecting NOI religious belief to the everyday life and reality of domestic workers was the Muslim Girls Training and General Civilization Classes (MGT/GCC). The MGT classes trained NOI women in the art and science of home economics, such as homecare, child rearing, and sewing.[30] These courses taught subjects similar to, if not the same as, the duties a domestic worker would expect to perform on the job—with two noticeable exceptions. Instead of teaching NOI women to defer to the authority and command of their employers, the classes made NOI women sovereigns in their own domain; and, the work changed from being an occupational task to a religiously charged activity. At a time when no national guild existed to professionalize the jobs of domestic servants, the NOI found a creative means to cognitively empower this class of workers. Moreover, in much the same way that Pentecostal and holiness churches created a space for the socially rebuked worship styles of African American Southern migrants, the NOI's MGT classes may have displaced the low socio-economic status associated with domestic work in twentieth-century African American communities. With respect to its MGT classes, and its propagation, the NOI appears to have made its religious teachings practical to the everyday experiences of domestic workers. Indeed, one of several unique ways that women who converted to the NOI redefined their social status involved signifying their religious beliefs through their dress or NOI uniforms.[31]

The uniform worn by NOI women provided a means of practicing, if not performing, NOI eschatology while at work. The dress of NOI women and the attire worn by domestic workers were conspicuously similar. Both outfits generally called for the removal of the hair from public view and placement under a headscarf or similar piece of clothing. Ankle or floor-length dresses characterized the external form of both clothing styles. According to Waheedah Bilal, a lieutenant and former seamstress in the NOI, a typical NOI dress consisted of pants sewn into the waistline beneath the skirt. NOI women considered the "pants-skirt," as it was called, "to be a divine gift from Elijah Muhammad."[32] This design allowed for ease of movement while on the job and flexibility to defend one's self in case of attack. In his examination of

how female members in the NOI interpreted the significance of their dress code, Edward V. Curtis suggests that as a " . . . clear form of public identification, Muslim styles of dress and adornment became a form of resistance against potential harassment by men. . . ."[33] The dress was therefore made relevant to the everyday experience of domestic workers who could expect to stand or walk the city streets in her typical workday.

Wearing a religious uniform to work represented, perhaps, the epitome of practicing religious belief in the everyday life of a believer and was not an uncommon occurrence among NOI women. Louis E. Lomax, an early biographer of the movement, recalled coming across an NOI woman at work in Central Park, New York, and seeing "a Muslim sister working as a nurse maid to three white children!" He further commented that " . . . .the rise of the Black Muslims has sent a quiet but very real chill through the employment agencies in several major cities . . . .And there is no way . . . .to determine if Negro applicants are Black Muslims before sending them out as servants in white homes."[34] Although Lomax's perception obviously represents an extremely judgmental understanding of women in the NOI, he did observe the practice of NOI women wearing their religion to work.

Certainly, not all women in the NOI were domestics and viewed the required uniform as liberating. By the early 1960s, the NOI was actively discouraging women in its Newark, New Jersey, temple from being employed as domestic servants, going so far as to call housework "derogatory."[35] C. S'thembile West notes that as the NOI began to attract new members from a range of professions and educational backgrounds during this period, there were "women who had been accustomed to wearing a variety of clothing," and felt restricted to the uniform.[36] Similarly, it was not uncommon for an NOI member who held previous employment as a domestic worker to begin producing NOI uniforms as a means of self-employment.[37] African American women considered dressmaking a very reputable profession in the 1930s, and the practice of buying fabric and creating an outfit became a standard practice for making clothing in the NOI.[38] Elijah Muhammad encouraged ". . . those with the knowledge of dressmaking," to pool their resources and improve their economic condition.[39]

Entrepreneurship became a major feature of NOI activity in the years immediately following the end of WWII. By the end of 1946, the organization had a grocery store, restaurant, bakery, and massive amounts of farmland in Michigan.[40] Eventually the NOI woman's uniform became a garment that expressed significant religious symbolism with respect to the NOI's ethno-religious teachings on economic nationalism. Neatly stitched an inch or so below the inner neckline of the blouse was a label adorned with letters in cursive script that read: "Muhammad's Temple No. 2."[41] Essentially the garment's name brand, the label identified the dress as a product of the NOI's clothing factory in Chicago. Established after Elijah Muhammad's release

from prison in 1946, and as a consequence of the NOI's rapid national expansion, the movement acquired a clothing factory and clothing store located at 453 E. 79th St., and 553 E. 79th St., respectively, in Chicago.[42] The NOI placed Ethel Sharrief, a daughter of Elijah Muhammad, in charge as chief designer of its clothing factory.[43] Because Temple No. 2 was also the headquarters of the NOI, the label physically connected the garment to the official body and internal economy of the movement. The exact words and typeface of that label also served as the header on the first official correspondence an aspiring convert received from the NOI.[44]

Similarly, the name brand grounded the dress within the NOI's theological emphasis on the importance of naming. The belief that knowledge of self was imperative to a convert's understanding of the divinity of both God and Black people was a fundamental aspect of the NOI's religious philosophy and conversion of African Americans. Replacing one's "slave name" or inherited surname with an "X" was the first step in that process of self-knowledge and religious enlightenment. By wearing these garments with NOI labeling, NOI women were not only reclaiming the knowledge of themselves in their physical bodies, but in their material worlds as well. Thus, the act of making and wearing uniforms played a significant role in how NOI women constructed their own religious identity and signified the theological teachings of the NOI in their everyday lives.[45]

The ability to fashion one's religious experience through garment making was not an available option for men in the organization. NOI dress protocol only instructed that men in the organization wear dark suits.[46] The relationship between uniforms and religious identity in the NOI seems to be fairly close, for it was not until the mid 1960s, immediately following the departure and assassination of Malcolm X that the NOI adopted paramilitary style uniforms for men. Particularly in its formative years, when the theological teachings of the NOI came under attack from religious dissidents and government officials, the uniform made and worn by women in the NOI provided a concrete public expression of NOI religious belief and collective expression of group consciousness. The fact that men in the NOI would briefly flirt with the practice of using these uniforms as a means of validating their religious beliefs while facing government challenges to their civil liberties during this period should come as no surprise.

The fist publicly reported instance of a man in the Nation of Islam wearing Islamic dress came in the spring of 1942. On May 8, the Washington D. C., police department arrested Elijah Muhammad on charges of sedition and failing to register for the draft. After sitting in jail for several weeks, a group of NOI members led by Clara Muhammad came to Elijah Muhammad's rescue by securing his release on a $5,000 bond. The event received some attention by the local media. Clara Muhammad wore a floor-length dress and long flowing headscarf similar to the model of dress that would become

standard for women in the NOI. She also provided Elijah Muhammad with a tunic and head-wrap, which he wore at the time of his release.[47] This was a very significant moment in the Nation of Islam. Clara Muhammad had used the event to make a political statement about the religiosity of the Nation of Islam, but what caused Elijah Muhammad to briefly change the everyday religious practice for men in the NOI by wearing items brought to him at his bail release?

Indeed, given the evidence that uniforms provided a means for women in the NOI to signify their religious beliefs in public, Clara Muhammad's act had potentially far reaching implications regarding the state of power relationships between men and women in the NOI. Perhaps most significantly, while men were responsible for delivering the theological tenets of the NOI to lay members, these theological teachings were the subject of constant attack either from group defectors or sedition charges brought against the religious community. The question of male uniforms, items that lay within NOI women's sphere of creative production, appears to have given NOI men an additional, if not alternative, grounds upon which to validate their religious beliefs and defend their civil liberties. Conversely, Elijah Muhammad's decision to begin wearing uniforms in the spring of 1942 likely provided a sense of religious solidarity and group cohesion among members at a difficult time in the organization's brief history.

While Clara Muhammad's visionary idea to adorn her husband in dress typically worn by Muslims potentially took her husband's religious beliefs out of the realm of theological interpretation (where they had been subject to such intense public ridicule) and into the arena of everyday religious experience, it was not successful in providing a legal basis to secure her husband's first amendment rights. Elijah Muhammad would begin serving his prison sentence for draft evasion at the Federal Corrections Institute at Milan, Michigan a year after his initial arrest.[48]

Whereas women were prominent if not coequal participants in the NOI's civil rights concerns prior to the spring of 1942, it appears that the federal government's arrest of NOI members on charges of draft evasion effectively prioritized the realities and struggles of men within the NOI's emergent struggle to defend its religious freedoms. Women had been arrested alongside men throughout the NOI's efforts to educate their children outside of the public schools system in Detroit. As the principal educators in what eventually became known as the Clara Muhammad Schools, NOI women had vested interests in making sure these institutions provided primary and secondary education for the NOI's children. Notwithstanding these efforts, of the 38 NOI members arrested in September 1942, only one was female. Unable to win an indictment against the NOI for committing sedition, the assistant federal prosecutor in the case, John D. Owen, dismissed charges against Mrs. Pauline Bahar, who the FBI and news media considered to be one of the

NOI's five most powerful people.[49] Bahar had served as secretary for the NOI's temple in Chicago. Although authorities had arrested her husband earlier, Bahar managed to elude capture for three days. Ironically, NOI uniforms did play a role in how law enforcement officials perceived NOI members such as Bahar. Upon her initial arrest, federal agents told the press "The leaders that we took into custody today and Sunday have lavish and expensive costumes."[50]

In the final analysis, domestic service proved to be a critical resource and basis upon which women in the NOI sought to organize their religious experiences. NOI women began to reevaluate the material basis of their discrimination in employment and society as domestic workers and southern born migrants through the use of religious uniforms. While these uniforms offered NOI women an alternative source of income or means of engaging their occupational experiences as domestic workers, they also had the potential to secure the civil liberties of the NOI's leader, Elijah Muhammad. Domestic workers also proved instrumental in both the NOI's initial efforts at propagation and instructional design for female members. This hidden, almost subterranean, level of organization ultimately proved critical to the NOI's ability to sustain itself in its formative years.

NOTES

1. Beynon, "The Voodoo Cult," 895.
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3. Jane E. Dabel, *Black Women in America*, s.v. "Domestic Workers," (New York: Oxford University Press, 2005) 364.
4. Harlan Gilmore and Logan Wilson, "The Employment of Negro Women in New Orleans," *Social Forces* 22, no. 3 (March, 1944): 319.
5. Drake, St. Claire and Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City*, with an Introduction by Richard Wright (New York: Harcourt, Brace and Company, 1945), 231, 242.
6. Robert E. Weems, Jr., *Desegregating the Dollar: African American Consumerism in the Twentieth Century* (New York: New York University Press, 1998) 72.
7. Dabel, *Black Women in America,* 362–364; Judith Rollins, *Between Women: Domestics and Their Employers* (Philadelphia: Temple University Press, 1985) 54.
8. Rollins, *Between Women*, 54–55; Elizabeth Clark-Lewis, *Living In, Living Out: African American Domestics in Washington, D.C., 1910–1940* (Washington: Smithsonian Institution Press, 1994) 147–153.
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12. St. Claire Drake and Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City*, with an Introduction by Richard Wright (New York: Harcourt, Brace and Company, 1945), 246.

13. Ella Baker and Marvel Cooke, "The Bronx Slave Market," *Crisis* (November 1935): 330.
14. Gray, *Black Female Domestics*, 42.
15. James L. Conyers, Jr., ed., *Carter G. Woodson: A Historical Reader* (New York: Garland Publishing, Inc., 2000), 136. See also: Patricia Hunt-Hurst, *Black Women*, "Fashion Industry," 425.
16. Weems, *Desegregating the Dollar*, 32–33.
17. Weaver, "Training Negroes," 496–497; John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans*, 8th ed. (New York: Alfred A. Knopf, 2001), 430.
18. Rosetta E. Ross, *Witnessing and Testifying: Black Women, Religion, and Civil Rights* (Minneapolis: Fortress Press, 2003) 40; Baker and Cooke, "Slave Market," 330; Brenda Clegg Gray, *Black Female Domestics*, 57–58.
19. Eric Foner, *The Story of American Freedom* (New York: W.W. Norton & Company, 1998), 206–207. Even after domestic workers were included in minimum wage legislation passed in 1974, employers still found reasons to disregard their obligation to pay into social security for their servants. For more information, see: Rollins, *Between Women*, 76–78.
20. Ibid., 32–33.
21. According to Claude A. Clegg, whatever power NOI women might have had was illusive at best as gender relations in the NOI revealed that men had constructed an exalted image of NOI women for their own benefit. Obviously, the approach here suggests an alternative interpretation of the ways in which NOI women might have had semi-autonomous control over their religious experience. See, Clegg, *An Original Man*, 102.
22. Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York: Vintage Books, 2004), 50–51.
23. Malcolm X, *The Autobiography of Malcolm X* (New York: Ballantine Books, 1999), 226.
24. Clegg, *An Original Man*, 101.
25. Gray, *Black Female Domestics*, 109.
26. Connecticut. Department of Labor, *Household Employment in Hartford, Waterbury and Litchfield, Connecticut* (Hartford: The Connecticut Department of Labor in Cooperation with the Young Women's Christian Association of Hartford, 1936), 54.
27. Andrew P. Smallwood, "The Legacy of Malcolm X's Leadership: In the Tradition of Africana Social Movements," in *Malcolm X: A Historical Reader,* ed., James L. Conyers, Jr. and Andrew P. Smallwood (Durham: Carolina Academic Press, 2008), 6. The surname Bey suggests the strong possibility that she may have converted from the Moorish Science Temple of America, an African American Muslim community that also had a significant presence in Hartford at the time. For more information, see E. E. Calverly, "Negro Muslims in Hartford," *Muslim World* 55 (October, 1965): 340–345.
28. Malcolm X, *The Autobiography*, 222–223.
29. Evanzz, *The Messenger*, 456.
30. Muhammad's Mosque of Islam (MMI), "Your Orientation Brochure," (Chicago: s.n., 196-), 2a, (Rare Book & Manuscript Library, University of Illinois at Urbana-Champaign); Lincoln, *Black Muslims*, 123.
31. Edward E. Curtis, IV, *Black Muslim Religion in the Nation of Islam, 1960–1975* (Chapel Hill: University of North Carolina Press, 2006), 109–118. Using editorial narratives published in *Muhammad Speaks*, Curtis provides a well-documented discussion on how men and women in the NOI interpreted their dress styles within the context of the period.
32. Waheedah Bilal, interview by Malachi Crawford, 18 April 2005. The evidence for the "pants-skirt" being a divine gift from Elijah Muhammad is disputable since Muhammad is not known to have had experience in garment design.
33. Curtis, *Black Muslim Religion*, 117.
34. Louis E. Lomax, *When the Word is Given: A Report on Elijah Muhammad, Malcolm X and the Black Muslim World* (Cleveland: World Pub. Co., 1964), 57.
35. Cynthia S'thembile West, "Nation Builders: Female Activism in the Nation of Islam, 1960-1970," (Ph.d. diss., Temple University, 1994), 180.

36. Ibid., 183.
37. Curtis, *Black Muslim Religion*, 117.
38. Hunt-Hurst, *Black Women in America*, 426; Curtis, *Black Muslim Religion*, 116–117.
39. Muhammad, *Message to the Blackman*, 174.
40. Clegg, *An Original Man*, 99.
41. Bilal, Interview, April 18, 2005.
42. *Muhammad Speaks*, December 31, 1961, 8; February, 1962, 16.
43. Ibid.; Clegg, *An Original Man*, 309; Essien-Udom, *Black Nationalism*, 167.
44. Bilal, Interview, April 18, 2005.
45. Clegg, *An Original Man*, 27–28.
46. Curtis, *Black Muslim Religion*, 109.
47. Karl Evanzz, *The Messenger: The Rise and Fall of Elijah Muhammad* (New York: Vintage Books, 1999), 137–138.
48. "Hold 2 Men for Evading Draft Law," *Chicago Defender*, April 11, 1942, p. 7, col. 1; Muhammad, *Message to the Blackman*, 179; "Sedition, Draft Evasion Cases Up In Three Cities," *Chicago Defender*, December 5, 1942, p.1, col. 2; "Tells Court His Allegiance Pledged To 'Islam'; Not U.S.," *Chicago Defender*, August 8, 1942, p. 12, col. 5; Evanzz, *The Messenger*, 136, 139; "selective service." *The Columbia Encyclopedia, Sixth Edition*. 2008. *Encyclopedi a.com.* (February 13, 2010). http://www.encyclopedia.com/doc/1E1-selectiv.html
49. *Chicago Defender*, June 19, 1943, p.5.
50. "Key Woman Seized in Sedition Cults," *New York Times*, September 23, 1942, p. 27.

Chapter Four

The Interwar Period, 1942–1957

In the spring of 1938, Washington, D. C., offered Elijah Muhammad an ideal opportunity to rebuild his religious community and restart his propagation of Islam. The city was far enough away from his detractors in the Midwest, who had also established themselves in places like Philadelphia, New Jersey, and New York, and still had a sizeable African American community. Muhammad could also take it upon himself to read the list of 104 books that Fard had given to him by visiting the Library of Congress. He moved to a house along the northwest section of Girard St., in the predominantly African American section of the city, where he got a room as a boarder not more than five blocks from Howard University. Although he had no way of foreshadowing what his future held in the nation's capital, in four years, Elijah Muhammad would find himself along with dozens of other men in the NOI in prison on charges of sedition and draft evasion. For the time being, however, events were beginning to transpire that would ultimately influence the ability of the NOI to legally defend the civil liberties of its members.[1]

Not far from where the federal government had launched its surveillance and arrests of NOI members in Washington, D. C., the legal training and research that would become instrumental in the NOI's eventual efforts to successfully defend its first amendment rights was already being undertaken. Beginning in the late fall of 1939, Charles Hamilton Houston, professor of law at the Howard University School of Law and the legal pioneer generally credited with laying the groundwork that ultimately culminated in the US Supreme Court decision *Brown v. Board of Education* (1954), requested and received permission to restructure the law school's course on civil rights.[2] Under the watchful tutelage of Houston, the new course on civil rights prioritized examining first amendment rights—specifically, religious freedom and

free speech. It was a significant, if largely unnoticed, aspect of his legal and teaching career.

Charles H. Houston was born in Washington, D. C., in 1895, and appeared destined to lead an accomplished—if not remarkable—life early on. By all accounts, Houston excelled as a student, attending the famed M Street High School in Washington D. C., before earning his B.A. at Amherst College. From 1917 to 1919, he served as an officer in the racially segregated American Expeditionary Forces during World War I, an experience that brought Houston face to face with the international dimensions of American race relations. After an honorable discharge from the military, Houston attended law school at Harvard University, where he eventually became co-editor of the prestigious *Harvard Law Review*. In the short period between his graduation from law school in 1923, and his untimely death almost three decades later, Houston dedicated his life to building the institutional and operational foundations upon which African American communities could legally defend their civil rights in America.[3]

In 1929, Houston accepted the position of dean at Howard University's Law School and began what some consider the defining work of his professional career. After his arrival, Houston launched an ambitious and highly controversial program to change Howard's Law School from a night school into a fully accredited day school. Resistance from the law school's alumni was considerable as many believed that the night program provided a necessary service to a community whose potential lawyers could ill-afford to attend classes rather than work during the day. By 1931, however, Houston had prevailed in getting the law school fully accredited and nationally recognized. Similarly, as professor of law, Houston impressed upon his students the importance of being proactive in defending the civil rights of African Americans. At the time, he used his course on civil rights as a training ground to rehearse and instruct his students in a strategy for dismantling racial segregation. Indeed, his initial "cadre" of students included brilliant young minds and future lawyers like Thurgood Marshall and Constance B. Motley.[4]

In addition to his work in the classroom, Houston explored alternative options for challenging racial discrimination. Prior to his arrival at Howard, Houston had researched the access that African American communities in the South had to African American lawyers. He also collected interviews and took copious notes on the discrepancy in state funding among racially segregated public schools in the South. Although his administrative and teaching responsibilities at Howard received the majority of his time and attention, Houston increasingly looked to his organizational and professional affiliations as platforms he could use to protect African American civil rights.

In 1935, Houston became special counsel to the NAACP. For the next three years, Houston created a body of work that eventually culminated in the

dissolution of racial segregation in America. In essence, his plan was straightforward: establish a series of trial cases attacking segregation in transportation and education that would provide legal precedent for overturning *Plessy v. Ferguson* (1896), which had established racial segregation as a matter of law. Yet, Houston was also aware of the importance that public opinion had on the interpretation and enjoyment of American civil rights laws. He argued that, "An effective program must involve the masses of blacks with their role being the initiation of action . . . "[5]

Houston's inaugural victory against segregation came in 1936, when the Maryland Court of Appeals ruled in *Murray v. Maryland* that the University of Maryland's attempt to give his client, Donald G. Murray, tuition to attend law school out of state violated Murray's Fourteenth Amendment right to equal protection under the law. Another—somewhat disappointing—success soon followed the verdict reached in Maryland with the 1938 case *Missouri ex rel. Gaines v. Canada*. In this particular case, although the state courts had upheld the decision by the curators of the University of Missouri to deny Lloyd Gaines's application to the university's law school, Gaines's counsel, led by Houston and Thurgood Marshall, successfully petitioned the US Supreme Court to overturn those decisions by ruling that the state institution had violated Gaines's Constitutional rights as a taxpaying citizen of the state of Missouri. Unfortunately, "Because of the unaccounted disappearance of Lloyd Gaines," the decision could not be implemented. The ruling was significant, nevertheless, because of its national scope in that it made denying an applicant to a state-funded graduate or professional school on account of their race unconstitutional. Although Houston had served in the position of special counsel to the NAACP for three years, a desire to be closer to his family, earn a better living, and look after the family law firm caused him to pursue private practice by 1939.[6]

During the 1939–1940 academic year, Houston accepted a post as associate dean at Howard University's Law School. In the fall, Houston received a letter of appointment to teach the law school's civil rights course for third year students, a move that would have a particularly critical influence on the meaning and experience of religious freedom for hundreds—if not thousands—of African American Muslims. Although his course on civil rights would not start until January, Houston seemed eager to begin altering the direction and content of the course. In November, his longtime friend and dean of the law school, William H. Hastie, requested Houston's input in changing the course description used by the previous instructor of record, James Nabrit. While under Professor Nabrit's instruction, the course had focused on securing Fourteenth Amendment rights for African Americans by challenging "police brutality, segregation and transportation disabilities, restrictive covenants, educational disabilities . . . and discrimination in state and federal employment. . ."[7]

Under Houston, the course would focus on the Bill of Rights, placing particular emphasis on civil liberties found within the First Amendment, such as religious freedom and free speech. One week into his first semester back teaching at Howard, Houston wrote to Roger Baldwin, president of the American Civil Liberties Union (ACLU), requesting information on recent court cases shaping civil liberties litigation in the U.S. Baldwin and Houston knew of each other from Houston's days as special counsel for the NAACP, as Baldwin was on the board of directors for the NAACP's Garland Fund. Houston ordered multiple copies of five pamphlets on civil liberties, including the ACLU's *Religious Liberty in the U.S. Today: A Survey of the Restraints on Religious Freedom* (1939) and *Why We Defend Free Speech for Nazis, Fascists and Communists: An Answer to Those Who Would Deny Liberty to Those They Characterize as Enemies of Democracy* (1939). Despite not having the material in hand at the beginning of the course, Houston covered significant statutory material and case law on religious freedom exclusively for the first few weeks of class.[8]

Houston's decision to shift previous course content away from violations of African American civil rights under the Fourteenth Amendment and toward discussions of civil liberties such as religious freedom and free speech appears somewhat illogical given the time he invested in preparing legal challenges to racial discrimination in public education and transportation. One possible explanation for his decision to make adjustments to the course lies in the complex nature of Houston himself. For he was not only a scholar, but an activist who prided himself on making his courses relevant to the day to day struggles facing African Americans. Houston was notorious for keeping abreast of the ebb and flow of politics in the nation's capital. From this perspective, it seems altogether reasonable that Houston decided to alter the direction of Howard's course on civil rights in anticipation of Congress passing a major piece of legislation affecting American civil liberties in the spring of 1940, the alien registration bill.[9]

In an atmosphere of fear about the intentions and loyalties of aliens and communists, Howard W. Smith, a Democratic congressman from Virginia, authored the bill, which made encouraging the overthrow of government by violence or force a federal crime. The law provided one of the principal basis with which the Department of Justice would arrest and prosecute NOI members nearly one year later. While this helps to explain Houston's consideration of free speech rights for African Americans, it cannot by itself explain his evident concern for emphasizing the study of legal precedent on religious freedom as well.[10]

The possibility of the U.S. entering into another world war and instating a military draft, in addition to the passage of the Alien Registration Act, apparently had the cumulative effect of compelling Houston to build a course designed to produce lawyers who would safeguard African American civil

liberties. On June 16, Houston penned an article in the *Crisis* challenging African Americans to protest racial discrimination in the military in anticipation of the country going to war, stating "every sign indicates that this country is going to adopt universal military service."[11]

Whatever his reasons for altering the content of the civil rights course, Houston's new course convened at a critical moment and addressed an imperative need in the legal history of African American Muslims. In a few years, the Justice Department would launch nationwide arrests of African American Muslim communities that it deemed subversive. At least one of the lawyers who took the revised course under Houston, Edward W. Jacko, Jr. later became chief legal counsel for the NOI and spearheaded its evolving legal initiatives. In no small sense, Jacko's successful legal battles to defend the civil liberties of NOI members demonstrates the profound and compelling trajectory of Charles H. Houston's legal mind.

Edward W. Jacko, Jr. was the younger of two children born to Mr. and Mrs. Edward W. Jacko in Little Rock, Arkansas on April 16, 1916. His older sister Thelma was two years his senior. Despite being born into a relatively small household, he would have had spiritual and material support from a significant number of extended family members living nearby. His paternal grandparents, Joseph and Eliza Jacko, had ten children, the youngest of whom, Edward's father, was born in 1885.[12]

Given the dynamics of African American life in Jefferson County as well as his family history, it seems that Edward Jr., would likely have gone into industrial labor, agriculture, or perhaps even business. Despite a growing tendency by local and state authorities to impress African American men into various forms of peonage, by the start of the twentieth century, African Americans throughout Arkansas had begun to make sizeable economic gains with respect to business development. The 1880 US Census reveals that Edward's grandparents, Joseph and Eliza, owned their house and the land that it was on outright. Later census data reveals that his father and several uncles took-up employment as day laborers at railroad yards or lumber mills at their own discretion. It would not be unreasonable to suggest that Edward Jr., would have pursued any one of these endeavors, however, when he was only three years old, an event took place that had a dramatic influence on race relations in Arkansas.[13]

African Americans who were living in Arkansas' southeastern counties soon discovered that they were not immune from the widespread racial violence that seemed to grip the nation in the years following the end of World War I. Known as the "Red Summer" of 1919, a number of African American communities living in or nearby major metropolitan or urban areas experienced major social upheavals as race riots exploded across the U.S. Racial tensions in southern Arkansas were particularly on edge that summer, given recent attempts by African American sharecroppers to organize a union and

challenge a system of peonage inhibiting them from receiving fair market value for their cotton, and keeping them tied to the land through various accounting schemes. On 1 October, a riot broke out in the towns of Helena and Elaine, leaving several men dead, thousands displaced from their homes, and hundreds of African Americans arrested and thrown in jail. For four days of intense rioting, the eyes of the country were turned toward Little Rock until federal troops intervened to restore order in the county. Local newspapers and an official inquiry into the causes of the riot placed singular blame at the hands of the African American community. When the dust settled, a local court had sentenced twelve African American men to death on charges of murder. With public outrage over the sentencing spilling over into African American newspapers, the NAACP appointed two lawyers from Pulaski County, George W. Murphy and Scipio A. Jones, to seek the men's release.[14]

Despite dealing with various constraints, limited resources and initial setbacks, Scipio Jones emerged as one of the most recognized African Americans of his time in Little Rock's African American community, if not all of Arkansas, at the conclusion of the case. Initially, the NAACP had hired Murphy, a white former state attorney general, to present oral arguments on appeal, and Jones, who was African American, to prepare the briefs in the case. This strategy of using white lawyers to present oral arguments in cases defending African American civil rights adhered to the NAACP's long-held belief that American society (and by extension, American courts) would not be favorably disposed to agreeing with the legal arguments of African American lawyers. Nevertheless, when Murphy died one year into the case, Jones became the principal lawyer for the defendants. The case was eventually won when, after the US Supreme Court overturned the verdicts on account of court errors in the initial trials, the state discontinued its prosecution of the defendants. So widely appreciated was the contribution that Jones had made to the advancement of African American civil rights that Thurgood Marshall would later comment that lawyers working in the early years of the organization, such as Jones, " . . . created a national respect for the N.A.A.C.P." Edward, Jr. was only nine when Governor McRae freed the last of the twelve defendants from the state penitentiary, but exposure to such issues and the capacity of an African American lawyer to successfully defend African American civil rights undoubtedly left an impression on his young mind and future career choice.[15]

Jacko's initial educational experiences were heavily influenced by his religious background. In 1934, he enrolled at Talladega College in Alabama, a school that had historically catered to African American members of the Congregational Church. Jacko belonged to this particular denomination and would remain a member for the rest of his life. Methodists or Baptists operated several other colleges in Little Rock that African Americans could attend,

including: Philander Smith College, Shorter College, and Arkansas Baptist College. First Congregational Church, however, had a long tradition of sending its youth to Talladega to receive an education. William Pickens, a well-known African American journalist who once worked for the NAACP and would go on to achieve infamous distinction within the ranks of the UNIA as a traitor, had also been a member of First Congregational Church and a graduate of Talladega. In his own way and with this supportive religious environment, Jacko would make the most of his college career.[16]

An ambitious mind and flexible personality allowed Jacko to pursue multiple interests in college and beyond. As an undergraduate, Jacko played on the school football team and joined the Alpha Beta chapter of Alpha Phi Alpha Fraternity, Inc. before receiving a bachelor of arts and graduating in 1938. He returned to Little Rock that summer and applied to the University of Arkansas School of Law in June. His application was the first known attempt by an African American to gain admittance to the law school at Fayetteville. While no record currently exists as to how the University of Arkansas responded to Jacko's application, the NAACP's recent legal victory against the University of Maryland in 1936 was a major concern to university officials at the time and probably played some factor in their decision. Although Jacko would ultimately attend law school elsewhere, his application to the University of Arkansas might have set a precedent for future African American applicants, nevertheless. In 1941, Scipio A. Jones negotiated an arrangement whereby the university agreed to pay the cost of tuition for African American applicants to attend law school at Howard University. Coincidentally, Jacko applied and was admitted on scholarship to Howard University Law School that fall.[17]

Life as a law student at Howard University was extraordinarily challenging. Of the approximately twenty students who comprised Jacko's incoming class, only thirteen went on to graduate. Worse still, Charles H. Houston, a professor known for demanding nothing short of excellence in his students, had accepted a teaching appointment almost two years into Jacko's time at the university. Moreover, Jacko would have been required to take Houston's altered course on civil rights, which was taught for one hour on Saturdays to third year students. During Houston's discussion of religious freedom, Jacko received instruction in several key issues that proved critical to his subsequent success as a lawyer for the NOI, including: "Conscientious objectors," the "Flag salute," the "Distribution of religious tracts," "Religious test as qualification for office or witness," the "Right to attend religious school," and "Court control over membership in [a] religious body." Jacko made the most of this experience and graduated with his doctor of laws (LL.D.) in May 1941.[18]

Having just earned his law degree from arguably the nation's premier institution in producing highly skilled and talented African American law-

yers, Jacko would have been an ideal candidate to defend the civil liberties of NOI members in Washington, D. C., in the summer and fall of 1942, but this was not to be. Jacko moved to New York, where he studied and passed the bar examination in that state in the spring of 1943. After practicing law for a few months, he enlisted as a private in the U.S. Army. Although it would be sometime before Jacko would become involved in providing a legal defense for the NOI, after returning to civilian life, it appears he took up his mentor's life work in making sure the rights and liberties guaranteed in the Constitution applied equally to all citizens in the country.[19]

Once back in New York, Jacko began taking the steps and making the connections that came to define his career as a civil rights and civil liberties lawyer. He opened up a law office at 209 W. 125th St., sharing space with another first-time out attorney and alumnus of Howard University's law school, Jawn A. Sandifer. Sandifer, who graduated from law school in 1938, did not have the fortune of taking classes with Charles H. Houston, but had known Jacko for some time prior to sharing office space in 1946. Both attorneys had taken and passed the bar examination for New york on the same day in 1943, previously making plans to work together before having to enlist in the military shortly thereafter. Now practicing out of the same office, the two soon became members of the New York City branch of the NAACP, working alongside Thurgood Marshall's wife, Vivian Burey Marshall, and other notable African American civic activists. It was the beginning of a professional relationship that led to an effective means of protecting African American civil rights in New York; and, ultimately, provided part of the initiative and context within which Edward W. Jacko, Jr. would begin legally defending the civil liberties of NOI members.[20]

Beginning in the mid 1940s, Jacko and Sandifer organized and refined their approach to defending African American civil rights in New York. In 1946, the NAACP's New York City branch elected Sandifer to be one of its representatives at the state convention in Jamestown, New York. His presence and skill as a delegate quickly caught the attention of James Allen, president of the state conference, who appointed Sandifer chairman of the legal redress committee for the New York branches of the NAACP, a position that allowed him to establish the priorities of the NAACP's legal efforts throughout the state.[21]

Initially, Sandifer saw *de facto* segregation as the principal obstacle toward advancing social equality in northern states. He modeled himself after Thurgood Marshall, and set about investigating and litigating cases of discrimination in hiring practices, hotel and travel accommodations, and merchant-consumer relations. Although these issues continued to occupy a significant amount of the legal redress committee's time and resources, it soon became obvious that police brutality was a major issue of critical concern to many African Americans living in New York. In 1948, Sandifer announced a

campaign whereby the NAACP would file civil as well as criminal charges against police departments accused of violating African American civil rights. Although accusations of police brutality were widespread and occurred throughout the state, a significant number of complaints came from the boroughs of Manhattan and the Bronx, making Edward W. Jacko, Jr. (who served as the Manhattan representative on the legal redress committee) the NAACP's principal attorney for resolving such disputes.[22]

In his battle to confront and challenge police brutality by the New York City Police Department, Jacko was outspoken, if not frequently successful. One of the first cases of police brutality brought to Jacko's attention occurred on May 4, 1950. The case involved an off-duty police officer, Rufus Schatzberg, accused of beating two African American business persons, Edna Turner and Melvin A. Barker, both from the Bronx. Jacko was quick to bring the event to the attention of African Americans in New York, calling the beating a "vicious unprovoked assault," in local papers.[23]

In fact, the range of clients for whom Jacko wound up fighting to protect their civil rights and liberties indicates that neither income nor social standing provided African Americans with barriers against police brutality. Alfred Black, a federal post office clerk, filed a complaint with the NAACP's New York branch for being beaten by two armed New York City detectives in August. The altercation came at a particularly tense time in the city as African American postal workers were routinely being discharged for speaking out against employment discrimination in New York's post offices. Jacko, who had also become vice-president of the New York City Branch, was successful in getting Michael Hartling, police captain at the East 51st St. station, to launch an inquiry into Black's claims.[24]

Quite often, victims of police brutality had to defend themselves against charges of disorderly conduct, creating a public disturbance, or assaulting a police officer, a tactic used by law enforcement officials to mitigate their chances of being prosecuted in court for police brutality. This was the case with John A. Webb, a disabled World War II veteran and federal employee who worked for the Social Security Administration. After calling on police to report having been mugged by two assailants, Webb was unexpectedly verbally and physically abused by the officer who arrived on the scene, Patrolman James M. Mullins of the West 123rd St. station. He proceeded to the West 123rd St. stationhouse to report being robbed to the desk officer, whereupon his abuse at the hands of Mullins recommenced and charges of disorderly conduct were levied against him. With Jacko serving as his defense counsel, Webb stood trial for three days before being exonerated of the charge. On Wednesday, January 16, 1952, Judge James E. Mulcahy issued an order for complaint against Mullins, the first of its kind against an on-duty police officer in Manhattan accused of police brutality. In 1950, an order of complaint had been issued against Rufus Schatzberg in his beating of Mrs.

Edna Turner, but Schatzberg was off-duty at the time.[25] Mullins was eventually brought to trial and acquitted of all charges.

Perhaps due to the frequent and violent manner in which African Americans were being deprived of due process of law, the NAACP began searching for extrajudicial means of arresting police brutality in New York. In September of 1952, the NAACP's New York City branch launched a campaign against allegations of brutality occurring in police stationhouses. The branch filed complaints with multiple governmental agencies, including the US Attorney's office and the Department of Justice following the beating of Jacob A. Jackson and his friend, Samuel Crawford, at the West 54th St. police precinct. Edward Jacko, assigned to the case by NAACP, made notice of the alarming frequency with which stationhouse beatings of African Americans were taking place in the city's precincts. The fact that Jackson and Crawford were arrested without cause, taken to the stationhouse and beaten while handcuffed—and in the presence of Mrs. Jackson who had also been arrested—made the case particularly disturbing. Police would later charge the Jacksons with felonious assault against the arresting officer, Walter J. Brennan, while Crawford was charged with interfering with a police officer. Jacko's persistence in the case would have national consequences.[26]

In later February 1953, newspapers throughout African American communities blared headlines of a secret agreement between the NYPD and the Department of Justice to forgo Federal Bureau of Investigation inquiries into alleged cases of police brutality. The agreement came to light following a series of complains that Jacko had filed with the police department, district attorney's office, and justice department. Apparently Jacko's complaint with the justice department led to a federal grand jury investigation into the alleged beatings of Jackson and Crawford, causing New York Police Commissioner George P. Monaghan to make a trip to Washington, D. C., and remind federal officials of the agreement's terms. When two FBI agents approached Monaghan about the Jackson case, he reportedly told them that he believed civil rights laws only applied, " . . . south of the Mason-Dixon line." Frederick Woltman, a news reporter for the *World Telegram & Sun*, assisted Jacko in uncovering the deal, which had been negotiated between First Deputy Commissioner Frank Fristensky and Assistant Attorney General James M. McInerney. The headlines generated from the discovery forced Attorney General James P. McGranery to declare the deal void, while Jacko announced plans to sue the city for $100,000 in damages.[27]

Although the case involving Jackson and Crawford eventually wound up before a federal grand jury, many allegations of police brutality against African Americans proved difficult to prosecute. Through his own legal experiences, Jacko came to believe that local magistrate courts typically shielded police from being criminally prosecuted by refusing summons or extending judicial immunity in their decisions when the evidence of criminal

conduct on the part of police officers clearly indicated guilt. Not surprisingly, in the wake of the scandal between the NYPD and the Justice Department, law enforcement officials instituted several cosmetic changes to their administrative duties, including the creation of a civilian complaint review board that contained no civilians on it and requiring captains and patrolmen to take a course on human relations.[28]

Locally, Jacko had been hugely successful in his bid to challenge police brutality of African Americans, but it was the 1957 police assault of Johnson Hinton, a thirty-one year old member of the Nation of Islam's Temple No. 7 in Harlem, that would bring Jacko's legal efforts to the attention of African Americans across the nation. He would be greatly assisted in his work on the Hinton case by the temple's young new minister, Malcolm X, an electrifying public speaker and community organizer who had been instrumental in helping augment the NOI's membership and public presence over the past five years. Malcolm X's decision to engage Jacko for legal counsel represents a profoundly significant event in the NOI's struggle to defend the civil rights and liberties of its members, and it is critical, therefore, to have a basic understanding of the historical context within which that decision arose.

From the end of World War II until the late 1950s, the NOI witnessed a period of unprecedented growth in both its membership and financial holdings. This growth can be partially attributed to Elijah Muhammad's strategic development of the NOI's entrepreneurial endeavors. Ultimately, this growth would demand a more concerted and conscious effort to sustain and legally protect on the part of NOI members.

Soon after Elijah Muhammad's release from prison in 1946, and partly as a consequence of the NOI's rapid national expansion, the movement acquired property and several small businesses throughout the country. Muhammad had decided to focus much of his energy and time on making the NOI economically self-sufficient once he returned from prison. Shortly thereafter, the NOI operated a clothing factory and clothing store located at 453 E. 79th St., and 553 E. 79th St., respectively, in Chicago.[29] The group placed Ethel Sharrief, a daughter of Elijah Muhammad, in charge as chief designer of its clothing factory.[30] The NOI also purchased a restaurant, bakery, grocery store, new temple in Chicago, and farmland and cattle in Michigan. Members were encouraged to purchase food and clothing items from NOI businesses. Moreover, as the NOI grew in size, its teachings of hard work, financial thrift, and moral cleanliness began to attract more middle-class African Americans who occasionally had businesses of their own. The NOI was beginning to chart a new course for itself, and Elijah Muhammad viewed the group's small business development as critical to its future success. In 1958, he urged all of his ministers to emphasize the NOI's economic philosophy and blueprint for African American communities, while toning

down discussions of its ethno-religious theology in public as a measure to further increase the NOI's membership numbers.[31]

When Elijah Muhammad did choose to mention the need for ethno-religious solidarity or African American subordination, it was usually not in the context of theology but as a means of encouraging African Americans to work and spend cooperatively in their communities. To this extent, Muhammad outlined an economic program that he believed would make African American communities economically self-determining. The program suggested that African Americans should "recognize the necessity for unity and group operation; pool your resources; Stop wanton criticism of everything that is black-owned and operated; . . . and, spend your money with your own kind." Muhammad also began publishing several weekly columns entitled, "Mr. Muhammad Speaks," in the *Pittsburgh Courier* and New York *Amsterdam News*. While the columns helped spread the NOI's message regarding the logic and need to protect African American women or support African American business development—as well as increased the circulation and subscription of the two newspapers, they also succeeded in angering local African American leadership in Pittsburgh and New York.[32]

In Pittsburgh, especially, events appeared to be getting away from Elijah Muhammad's national objectives. Local philanthropists, civil rights activists, and church leaders demanded to know where the NAACP stood in relation to the NOI, and asked the *Courier* to discontinue the column. Despite these requests, the Courier remained undeterred in its support for the NOI's right to free speech, giving Elijah Muhammad the prestigious Courier Achievement Award in 1957 for the NOI's contributions to the newspaper's circulation. While the NAACP's Roy Wilkins did issue a tepid statement denouncing the NOI, the *Courier* reluctantly discontinued the NOI's column only after it changed ownership in 1959. Meanwhile, Thurgood Marshall, special counsel for the NAACP's Legal Defense and Education Fund, weighed in on the matter at a speech given at Princeton University in 1959, calling the NOI " . . . a bunch of thugs organized from prisons and jails, and financed . . . by Nasser or some Arab group." Over a decade later, the comment would come back to haunt him as he had to recuse himself from ruling in *Clay v. United States* (1971). Following the *Courier's* decision to end the NOI's column, Elijah Muhammad moved "Mr. Muhammad Speaks" to the Los Angeles *Herald Dispatch*. Nevertheless, despite these few setbacks, numerous African Americans agreed with the NOI's interpretation of America's racial history and calls for economic solidarity, as was readily apparent when the *Herald Dispatch* abruptly increased its subscription and circulation performance. Yet, Elijah Muhammad was not alone in his efforts to build up the NOI's national presence. In fact, he could and would contribute much of his success to one of the new recruits he attracted during the period, Malcolm Little.[33]

Born in Omaha, Nebraska on May 19, 1925, Malcolm Little was the third son and fourth child of Earl and Louise Little. His parents were both active members in Marcus Garvey's United Negro Improvement Association—a fact that ultimately helped to shape his Pan African perspective on culture, human rights, political struggle and world history. After having their house burned to the ground by the Ku Klux Klan in Omaha, Earl and Louise Little moved their family to Lansing, Michigan. As it had in Omaha, the Little's expressions of black pride, economic independence and cultural integrity riled the social sensibilities of Lansing's white citizenry. Mysteriously, Earl Little died after being run over by a streetcar in downtown Lansing, in 1931.[34]

After the death of his father, Malcolm's childhood and adolescence took a drastic turn for the worse. Although he had once been one of the best performing students in his class, Malcolm's grades began to suffer as his attention increasingly shifted toward problems at home. The ideas of economic self-sufficiency epitomized by Malcolm's father had disappeared in his absence, and Louise Little found herself depending on state aid for her family's subsistence. With social workers making repeated visits to the Little household, the psychological health of Louise Little finally declined. Eventually, the state declared Malcolm's mother mentally unfit to rear her children and committed her to the state mental hospital at Kalamazoo in 1939. The court then placed Malcolm and his siblings into different orphanages. After completing the eighth grade, he dropped out of school and moved to Boston to live with his half-sister Ella Collins.[35]

As much as possible, his older sister Ella attempted to provide Malcolm with a sense of family and purpose. He occasionally attended St. Mark's Congregational Church, but was uninspired or unimpressed by what he found there and soon discovered alternative activities to hold his time and attention. As Louis A. DeCaro Jr., a biographer of Malcolm X's religious life points out, "the pull of the urban underworld was . . . too great."[36] Accordingly, to some extent, Malcolm found himself without a core family or community space within which he could ground his social identity; it would have devastating consequences for his future development.

He traveled between Boston and New York taking jobs as a shoeshine boy and porter before settling on the lust driven vices offered in Harlem's street life at the age of sixteen. His rapid descent into the moral abyss of Harlem's criminal society was countered only by the notoriety he gained as one of the most successful and flamboyant drug-dealing pimps in the city. A professional conartist, pimp, and numbers runner, Malcolm quickly began abusing the drugs and alcohol that he sold to members of Harlem's political and social elite. In time, Malcolm's lifestyle caught up with him and he went to prison on larceny charges in 1946.[37]

While serving his time in prison, Malcolm found solace and wisdom in the teachings of Elijah Muhammad and the Nation of Islam. Elijah Muhammad's instruction on the importance of family life, black pride, economic independence, literacy, thrift, self-discipline, and self-knowledge resonated with Malcolm's life experiences. In the course of a year, Malcolm experienced a spiritual transformation and became a member of the Nation of Islam (NOI), effectively changing his name to Malcolm X. He began participating on prison debate teams and studying the philosophy and writings of Herodotus, Socrates, Shakespeare, and Gandhi. Most importantly, Malcolm regained his cultural awareness while mastering the English language by memorizing the English dictionary.[38]

After being paroled in 1952, Malcolm committed himself to advancing the NOI's religious platform and teachings in Detroit's African American communities, where he was named assistant minister of Temple No. 1. His service in increasing membership numbers in Detroit and dedication to the cause of the NOI quickly attracted the attention of Elijah Muhammad. As a reward for his efforts, Muhammad named Malcolm minister of Temple No. 12 in Philadelphia. From 1954 to 1960, Malcolm continued to spread the teachings of Elijah Muhammad nationally and internationally. Throughout the 1950s, he traversed the country organizing numerous NOI temples in major cities, including Houston, Cincinnati, Los Angeles, Boston, San Francisco, Atlanta, St. Louis, and Baltimore.[39]

The dramatic increase in the number of NOI temples that Malcolm organized during the 1950s fails to adequately capture the corresponding increase in membership that also resulted from his propagation of NOI teachings. Although estimates of the NOI's membership vary dramatically according to source, moderate estimates given by scholars who chronicled the movement during the 1960s suggest that anywhere from 20,000 to 100,000 African Americans became members of the NOI during this period. By comparison, more than 3,000 persons attended the annual Savior's Day gathering in Chicago, in February 1957. Prior to Malcolm's organizational efforts, membership in the NOI had not surpassed 3,000 persons at its height. Malcolm's skills as a prolific orator, master scholar and brilliant organizer, however, were rewarded when Muhammad made Malcolm minister of Temple No. 7 in Harlem, New York, in 1954. Malcolm was instrumental in organizing the temple, which had an initial membership of around 350 believers. In many respects, the NOI's membership numbers belie the far greater number of African Americans who sympathized with some or many aspects of the group's teachings. By 1961, Malcolm would be named national spokesperson of the NOI. It is within this context of relative stability and growth that the NOI would turn its attention to resolving some of its longstanding concerns.[40]

From its earliest days, police harassment and brutality had been a significant problem for the NOI. NOI members had been wounded or beaten in several major cities, including Chicago, Detroit, and Baltimore. While the group successfully defended itself physically in many of these altercations, it usually wound up the worse for having done so in the long run. According to statements he made in an interview conducted by Hatim Sahib, a graduate student in sociology at the University of Chicago, Muhammad suggested that "the greatest loss of membership is always after some conflict with the police department." That certainly might have been the case in late February 1951, when a group of NOI members travelling from New York to a Savior's Day Convention in Chicago, got into a brawl with police aboard a passenger train in Silver Spring, Maryland. During the fight that ensued, police arrested nine NOI members who initially managed to disarm them before requesting additional assistance.[41]

Yet, it was precisely these types of situations that Muhammad wanted to avoid. In addition to the presence of the Fruit of Islam, who were responsible for guarding the NOI's temples, Elijah Muhammad's admonition to NOI ministers against making politically inflammatory statements hoped to reduce the potential for conflict between group members and local police departments. Given the fact that J. Edgar Hoover had labeled the group "un-American" and chose to increase surveillance of the NOI in 1956 through the use of electronic wiretaps, Muhammad's intentions were not likely to bear fruit any time soon. Indeed, 1957 proved to be a difficult year that saw public and sometimes violent exchanges between law enforcement officials and NOI members on both local and national levels.

The year was barely underway before the first sign of conflict took place. In late February, two male members, Joe Allen and George R. White, were jailed on assault charges for allegedly attacking Police Chief C. C. Hemby of Pensacola, Florida. Allen and White, who were travelling along the L & N Railroad with two female companions to the NOI's annual convention in Chicago, confronted Hemby for ordering their companions to vacate a whites-only section of the train platform in Flomaton, Alabama. The encounter quickly escalated into a fight, wherein Hemby sustained significant bodily injury.[42] As if that news were not bad enough, a federal grand jury indicted Muhammad's seventh son, Wallace D. Muhammad, for failing to register with selective service in August. Wallace Muhammad would spend the next three years in legal battles trying to stay out of prison.[43] Also in August, to deal with the steady stream of events taking place in NOI temples across the country, Muhammad created a public relations committee in the summer to "handle press releases, advertising, advice to ministers of local temples and the preparation and distribution of educational material."[44] It was a trying time, but perhaps the most sensational news had occurred in Harlem, New York just four months earlier.

When Johnson Hinton decided to come to the aide of an unarmed African American man being beaten by New York City policemen in late April 1957, his actions would—unbeknownst to him—have far reaching consequences for the principal ways in which the NOI would defend the civil rights and liberties of its members. Hinton and two other Muslims from Temple No. 7, Lypsie Tall and Frankie Lee Pots, had attempted to verbally intervene as several policemen were arresting Reese V. Poe on the corner of 125th Street and Lenox Avenue. After being told to move along by the arresting officers, one of the NOI members retorted, "You're not in Alabama—this is New York."[45] No less than four policemen responded by brutally attacking Hinton, who fell upon the ground attempting to protect himself. Despite being in the presence of a rapidly growing crowd, several of the officers drew their guns, with one reportedly stating, "I'd have shot the nigger but the other cops kept getting in my way."[46] After some time had passed, Hinton and the others were arrested and taken to the 28th precinct on 123rd Street, where Hinton continued to be beaten as he prayed, notwithstanding his being in critical condition.[47]

As word of the incident spread throughout Harlem, the response by NOI members was swift and alarming. Led by Malcolm X, approximately 100 members from the NOI's Temple No. 7 marched on the police station where Hinton was being held. The sheer size and precision of the group's military-like drill astounded many in the crowd, whose ranks had swollen to between 2,000 and 5,000 onlookers. Demanding to see Hinton before they would disperse, Malcolm X and several other NOI members became appalled at what they soon discovered: Hinton, bleeding severely from both his head and mouth, had been forced to remain in his cell without the benefit of medical attention. Realizing the critical nature of Hinton's situation, Malcolm X demanded that Hinton be immediately released to receive urgent medical care, whereupon police reluctantly agreed to transport Hinton to Sydenham Hospital. The medical staff at Sydenham managed to arrest much of the bleeding (although later tests revealed that Hinton had suffered a brain hemorrhage, contusion, and several lacerations to his skull), and Hinton was retransported back to the 28th precinct. He would be forced to wear a metal plate in his head for the rest of his life due to the beating he endured. According to James Hicks, editor of the *New York Amsterdam News*, the crowd which had followed the action from the station to the hospital and back again, "disappeared," into thin air after Malcolm X signaled that Hinton's basic needs and rights had been met.[48]

By the time the news of Hinton's arrest and subsequent protest by the NOI appeared in the press the following morning, Edward Jacko had distinguished himself as a credible trial lawyer who could and would defend African American victims of police brutality in a court of law. In February, he successfully sued New York City on behalf of Benjamin Fields, Jr., a

former African American construction worker who supported his mother and two children and had been shot by a patrolman in June of the previous year. Despite receiving a $50,000 settlement in the case, the shooting left Fields with a shattered liver and permanently crippled. The arresting officer in the case, Patrolman Harold Stewart, was eventually convicted of second degree assault. In September, a jury would award Jacob Jackson, his client from a police beating in 1952, with a $50,000 judgment in his claim against the City of New York. In just 1957 alone, Jacko won three civil cases against the city for police brutality attacks on African Americans.[49] A perceptive strategist and disciplined follower of his legal mentor, Charles H. Houston, Jacko had been attempting to make police aggression against African Americans financially unsustainable for the City of New York. He was working out of his own law office, located at 271 W. 125th St., when the news of Hinton's arrest came his way.

Given the nature of the assault that Hinton endured, the publicity generated from the event, and the NAACP's success in favorably resolving police brutality cases, Malcolm X acted quickly to retain the services of both Jacko and Jawn A. Sandifer. On July 24, Jacko filed suit against the City of New York on behalf of the three NOI members, claiming damages of $1,125,000. He delayed filing the claim until a grand jury cleared Hinton of felonious assault charges lodged against him by the arresting officers. For his injuries alone, Hinton sought $1,000,000 in compensation for loss of speech, work, memory, and sexual appetite. During the civil suit, Jacko and Sandifer proved brilliant in their oral arguments and cross-examination of key witnesses for the defense, showing a pattern of inconsistent testimony.[50]

Malcolm X was also persistent in applying pressure to the city to resolve what he saw as a systemic problem with how New York policemen interacted with African American communities. In a telegram to Police Commissioner Stephen Kennedy, he demanded that the two officers principally involved in the beating of Hinton be terminated from the police force, as opposed to being suspended or transferred. Commissioner Kennedy had promised that "justice would be done," if an impartial investigation into the assault found that the officers' use of force was unwarranted. Malcolm X took the grand jury's decision to abdicate Hinton of any wrongdoing as a sign that Hinton's action did not warrant the use of excessive force.[51]

On May 4, 1960, after three long years of setbacks and challenges, an all-white jury delivered a unanimous verdict on Hinton's behalf. He received $75,000 in damages from the city, the most awarded to any of Jacko's clients up to that time. It was a striking conclusion to a hard fought battle—one that would see Malcolm X and Edward W. Jacko, Jr. teaming up on many more occasions in an effort to protect the civil rights and liberties of NOI members.[52]

For the NOI, it was a significant moment that dramatically brought the group to the forefront of African American politics in New York. For one thing, although Elijah Muhammad prohibited NOI members from participating in electoral politics, the NOI's New York Mosque had a profound influence on regional politics among African Americans because of its lack of formal political ties and ability to draw large crowds of political sympathizers. Moreover, as the NOI's membership continued to grow and cases of police brutality continued to be brought to the public's attention, the religious community's talk of self-defense and calls for protecting African American communities increasingly began to alter African American public opinion of the group. In two years, a television documentary of the group that largely focused on the activities of NOI members in Temple No. 7 would be broadcast in homes across the nation. Even members of New York's long established civil rights communities, such as Edward W. Jacko, Jr., found their basic interests aligned with those of the NOI. Jacko's entrance into the legal life of the NOI marked a significant point of departure: one where the group principally sought and utilized professional legal counsel in its encounters with law enforcement. Within this context, local, state and federal courts would become key spaces where the NOI would seek to defend the civil rights and liberties of its members.[53]

NOTES

1. Evanzz, *The Messenger*, 135. Although it is generally believed that after going to Washington, D. C., in 1938, Elijah Muhammad visited the Library of Congress, it is also conceivable that he visited the various libraries located at Howard University from 1938 to the spring of 1942; Report—"Elijah Poole," SAC Chicago to FBI director, November 26, 1973, 6 (E. Muhammad FBI file: 105-24822).

2. William H. Hastie to Charles H. Houston, November 28, 1939, Charles H. Houston Papers, Box 163-6, Folder 2: "Teaching—Howard University School of Law-1940–1941—Letters of Appointment," Manuscript Division, Moorland-Spingarn Research Center, Howard University, Washington, D.C.

3. Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 31–32.

4. James, Jr., *Root and Branch*, 4–5, 21.

5. McNeil, *Groundwork*, 135; Charles H. Houston, "Don't Shout Too Soon," *Crisis* 43, (March 1936): 79, 91; James, *Root and Branch:* 79.

6. Thurgood Marshall, "An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts," *The Journal of Negro Education* 21, no. 3 (Summer, 1952): 317–318.

7. William H. Hastie to Charles H. Houston, November 28, 1939, Charles H. Houston Papers, Box 163-6, Folder 2: "Teaching—Howard University School of Law-1940–1941—Letters of Appointment," Manuscript Division, Moorland-Spingarn Research Center, Howard University, Washington, D.C.

8. Charles H. Houston to Mr. Roger Baldwin, January 30, 1940, Charles H. Houston Papers, Box 163-6, Folder 1: "Teaching—Howard University School of Law-1940-1941—Administrative Memos, 1931, 1940–1942," Manuscript Division, Moorland-Spingarn Research Center, Howard University, Washington, D. C.

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14. O. A. Rogers, Jr. "The Elaine Race Riots of 1919," *The Arkansas Historical Quarterly* 19, no. 2 (Summer, 1960): 144, 149; Tom Dillard, "Scipio A. Jones," *The Arkansas Historical Quarterly* 31, no. 3 (Autumn, 1972): 207.

15. Dillard, "Scipio A. Jones," 206–209; McNeil, *Groundwork*, 122; McNeil, "Charles Hamilton Houston," in *Black Leaders of the Twentieth Century*, 221; Thurgood Marshall, "The Fifty Year Fight for Civil Rights," July 16, 1959, Thurgood Marshall Papers, Box 579: "Miscellany, 1949–1963," Manuscript Division, Library of Congress, Washington, D.C., 3.

16. Gene Vinzant, "Mirage and Reality: Economic conditions in Black Little Rock in the 1920s," *The Arkansas Historical Quarterly* 63, no. 3 (Autumn, 2004): 264; William Pickens, *Bursting Bonds* (Boston, MA: The Jordan & More Press, 1923), 84, 104, 169; Martin, *Race First*, 311-315, 322, 327, 332.

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20. Ibid.; United States National Archives and Records Administration, *Electronic Army Serial Number Merged File, ca. 1938–1946* (Enlistment Records) [Electronic Records]: *World War II Army Enlistment Records*, Record Group 64, s. v. "Jawn A. Sandifer." Available [Online]: http://aad.archives.gov/aad/print-record-detail.jsp?dt=893&mtch=4&tf=F&q=Jacko%2C+Edward&bc=&rpp=10&pg=1&rid=8253071&rlst=4142536,4166726,8253071,572989 (accessed April 15, 2010); "NAACP Leaders Hear Reports on Activities of New York City Branch," *Norfolk New Journal and Guide*, 28 June 1947, p. a7, col. 3; *Howard University Directory of Graduates*, s.v. "Jawn A. Sandifer," (White Plains, NY: Bernard C. Harris Publishing Company, 1977), 419.

21. Jawn A. Sandifer, "Autobiography of Jawn A. Sandifer," Jawn A. Sandifer Papers, "Unprocessed," Manuscript Division, Moorland-Spingarn Research Center, Howard University, Washington, D.C., 11–12.

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28. "Police Begin Classes in Human Relations," *New York Amsterdam News*, May 30, 1953, p. 2, col. 1.
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30. Ibid.; Clegg, *An Original Man*, 309; Essien-Udom, *Black Nationalism*, 167.
31. "The Muslim Cult of Islam," SAC Letter No. 55-43, June 26, 1955, 17, 37 (Nation of Islam FBI file: Part 2).
32. Ibid., 38; Lincoln, *Black Muslims*, 137–138, 142–143.
33. "Activity Plentiful at Annual Muslim Convention," *Pittsburgh Courier*, 9 March 1957, p. 14, sec. 2; "Calls Moslem Leaders 'Thugs'" *Chicago Defender*, October 31, 1959, p. 1, col. 1; Lincoln, *Black Muslims*, 137–138, 142–143; Clegg, *An Original Man*, 116.
34. Malcolm X, *The Autobiography of Malcolm X* (as told to Alex Haley), (New York: Ballantine Books, 1965; reprint, 1988), 1–2, 9–11.
35. Clegg, *An Original Man*, 105-106; Malcolm X, *The Autobiography*, 17–18, 21, 38.
36. Louis A. DeCaro, Jr., *Malcolm and the Cross: The Nation of Islam, Malcolm X, and Christianity* (New York: New York University Press, 1998), 83–85. Coincidentally, Edward W. Jacko, Jr. was also a member of the Congregational Church, though not in Boston.
37. Ibid.; Clegg, *An Original Man*, 106–108.
38. Ibid.
39. Ibid.; Andrew P. Smallwood, "The Legacy of Malcolm X's Leadership: In the Tradition of Africana Social Movements," in *Malcolm X: A Historical Reader,* ed., James L. Conyers, Jr. and Andrew P. Smallwood (Durham: Carolina Academic Press, 2008), 6.
40. "Activity Plentiful at Annual Muslim Convention," *Pittsburgh Courier*, March 9, 1957, p. 14, sec. 2; "The Muslim Cult of Islam," SAC Letter No. 55–43, June 26, 1955, 36 (Nation of Islam FBI file: Part 2); Clegg, *An Original Man*, 114; Evanzz, *The Messenger*, 164.
41. Hatim A. Sahib, "The Nation of Islam," M.A. thesis, (Chicago: University of Chicago, 1985), 86–87; "The Muslim Cult of Islam," SAC Letter No. 55-43, June 26, 1955, 38 (Nation of Islam FBI file: Part 1).
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43. Evanzz, *The Messenger*, 174.
44. "The Muslim Cult of Islam," SAC Letter No. 55-43, June 26, 1955, 29 (Nation of Islam FBI file: Part 2).
45. "Riot Threat As Cops Beat Moslem," *New York Amsterdam News*, May 04, 1957, p. 1, col. 1.
46. Ibid., 32.
47. "Racial Tempers Flare As Police Hit Moslem," *Cleveland Call and Post*, May 11, 1957, p. 1–D, col. 7.

48. Ibid; "Riot Threat," p. 32; Evanzz, *The Messenger*, 171–172; Peter Goldman, *The Death and Life of Malcolm X*, 2d ed. Blacks in the New World (Urbana: University of Illinois Press, 1979), 56–59.

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50. "Cops Holding Moslem Hearing," *New York Amsterdam News*, February 01, 1958, p. 14, col. 1; "Sues City for Million," *New York Amsterdam News*, May 24, 1958, p. 1, col. 3; "Million $$ Brutality Case On," *New York Amsterdam News*, April 30, 1960, p.1, col. 3.

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52. "Muslim Wins $75,000 in Damages From City," *New York Amsterdam News*, May 07, 1960, p.1, col.1; "Wins $75,000 for Beating by Cops," *Cleveland Call and Post*, May 14, 1960, p. 2–A, col. 1.

53. Clegg, *An Original Man*, 118.

Chapter Five

A Prison Movement for Legal Legitimacy

The first major challenge that NOI members encountered with respect to denial of their civil liberties involved questions over their conscientious objection to service in the U.S. military or war of any kind. Although questions over the conscientious objector status of NOI members continued throughout the 1960s, the right to peacefully assemble in public and private spaces and protecting the religious freedoms of incarcerated NOI members became the defining struggles for the NOI throughout much of the decade. Be it in a state or federal prison, public spaces or the privacy of their own mosques, NOI members continued to fight for their right to exist as a religious body.

Not surprisingly, a profound and enduring change in the way that the NOI engaged this fight became increasingly clear following the Hinton case, as the religious community began to make frequent use of lawyers to defend the civil liberties of its members where it had not done so before. The NOI's previous decision not to employ lawyers, in general, had been largely due to two factors: first, the NOI's religious beliefs took precedence over other laws; and, second, the NOI viewed the American judicial system as inherently unjust. The attempted sacrificial slayings of several non-members in the NOI's early history revealed that members viewed their religious beliefs as the central and defining ideas that governed their lives even when those beliefs clashed with local, state and federal laws. Likewise, given the NOI's previously unsuccessful attempts to defend the civil liberties of its members in court through fighting or self-representation; what could the NOI realistically expect to gain from continuing to pursue justice in such public institutions? Elijah Muhammad could rhetorically ask, "When have we, the Muslims, ever received justice under the Constitution of America?" His reply that the NOI had not received justice " . . . one time in the courts of America,"

reflected a persuadable if not accurate assessment of the group's court record.[1]

In fact, in cases where the question of state persecution of the NOI arose, losing a legal case in defense of one's religious beliefs could have potential benefits. "Most believed," Claude Clegg notes, "that carrying out their religious obligations, even at the risk of incarceration, was an honorable exercise in righteousness."[2] Elijah Muhammad's willingness to suffer incarceration because of his religious teachings serves as a case in point. Imprisonment had provided Muhammad with a test of faith unlike any other event that he had previously experienced. His reluctance to betray his beliefs while facing the threat of incarceration placed him firmly within a tradition of court martyrdom and religious persecution descending from Marcus Garvey to his spiritual mentor Fard Muhammad. The fact that he did so clearly validated his spiritual leadership of the NOI.

For all of these reasons, the notion that the NOI would retain lawyers early on to defend the civil liberties of its members appeared somewhat problematic, if not outright ludicrous. Appearances notwithstanding, the fact that the NOI did subsequently retain the services of various lawyers to protect its members' civil liberties—beginning in the late 1950s until the passing of Elijah Muhammad in 1975—poses a very compelling question: how did the NOI's ethno-religious teachings negotiate pursuing legal cases in the courts given that this religious community viewed America as inherently unjust—at best—and morally damned—at worst? Largely because of its use of theology, the NOI could interpret and adapt religious teachings to meet evolving sociopolitical challenges. Evidence including speeches, published manuscripts, and newspaper accounts suggests that Elijah Muhammad specifically, and the NOI more generally, justified using lawyers and going into the courts as a means of defending NOI members' civil liberties on three grounds: first, the NOI told its members that federal and state laws which did not conflict with Islamic laws should be followed; second, financing court cases became a display of cooperative economics, an important theme in the NOI's teachings; and, third, the NOI held a corporeal understanding of justice.

One of the simplest ways that the NOI could justify using the courts to protect their rights of its members was its consistent support for law and order.[3] This longstanding policy gained literal expression when the NOI listed its ten-point program of its wants and twelve-point platform of its beliefs on the back of every issue of *Muhammad Speaks*, beginning in 1961. Noticeably, the second point under the group's list of wants stated "We want justice. Equal justice under the law. We want justice applied equally to all regardless of creed, class or color."[4] More pointedly, the sixth point on the list emphasized the NOI's belief that ". . . the Federal [sic] government should intercede to see that black men and women tried in white courts

receive justice in accordance with the laws of the land . . . "[5] Likewise, if any doubt existed as to how the NOI could considered US laws to be valid, the eighth point under the NOI's list of beliefs emphatically stated, "We recognize and respect American citizens as independent peoples, and we respect their laws which govern this nation."[6] Still there were other ways that the NOI could justify pursuing cases in court, despite its statements regarding their ineffectiveness.

Particularly when it came to police raids, the NOI portrayed retaining the legal services of defense attorneys as an act of collective economic self-reliance, a longstanding tenet in the NOI's ethno-religious belief system. For example, when approximately thirty-one police officers in Monroe, Louisiana, raided the NOI's local mosque on March 5, 1961, an editorial on the raid appearing in *Muhammad Speaks* suggested, "Every black man in America should aid in getting justice of these defenseless people by sending or wiring at least one dollar. . ."[7] In a scene reminiscent of Clara Muhammad's efforts to gain freedom for her husband in 1942, NOI members pooled their resources together to help pay the bail and legal costs for the nine incarcerated prisoners.[8] Couched in such familiar language and traditions, supporting the legal struggles of NOI members could become something of a religious obligation.

The NOI's understanding of justice as a corporeal, experientially tangible reality was yet a third means by which it could theologically understand and politically negotiate the use of lawyers in a system it deemed unjust. Be it Elijah Muhammad, Malcolm X or another religious official, NOI members repeatedly stated that justice was a goal that could only be achieved in the present. More precisely, heaven and hell were seen as states of man's current condition. US courts—as institutions having a profound impact on that condition—were entirely relevant. Accordingly, Elijah Muhammad believed in a sense of divine judgment that was tied to human agency. "There is no justice in the sweet bye and bye. Immortality is now, here. We . . . must exert every means to protect ourselves," he claimed.[9]

Although the NOI could and did find ways to negotiate the use of lawyers in courts, it should nevertheless be mentioned that, beginning in 1958, Elijah Muhammad actively sought to distance the NOI from any involvement or conflict with local law enforcement agencies or federal authorities.[10] Although he provided for the defense of NOI members who found themselves in trouble with the law, Elijah Muhammad demonstrated little initiative to actually change laws that were unfavorable to Muslims. The NOI's net income was principally spent on the day to day operating expenses of Muhammad's family, the NOI's headquarters, schools, and the elderly. Much of the financial support that Muhammad and other NOI members contributed toward assisting the legal battles of their associates were defensive in nature. NOI members were rarely plaintiffs who initiated litigation.[11] What made the

Hinton case so profoundly different from the cases that preceded it was that an NOI member was a plaintiff bringing suit against a perceived injustice by law enforcement officials. The notion that the NOI could and would use the courts as a space to bring about social change was a radical development that began with Malcolm X and evolved into incarcerated NOI members taking the same risks. As such, it deserves its own historical and political analysis.

Malcolm X's continued contact with African American inmates after his release from prison provides an important and necessary context for understanding his social justice initiatives. Considering that the political and racial world which Malcolm X entered following his release from prison had so dramatically changed since his entrance into prison, it seems inevitable that his approach to social change would markedly differ from that of his religious mentor, Elijah Muhammad. It seems that four factors influenced Malcolm X to pursue legal remedies as a way of bringing about social change for African American Muslims by protecting the civil liberties of incarcerated NOI members: the sudden and dramatic rise of the Civil Rights Movement to the forefront of national politics; the emergence of non-aligned and anti-colonial movements for independence taking place across the world, but particularly on the continent of Africa; his own experiences as an incarcerated Muslim; and, the legal relationships formed between the NOI and the New York chapter of the NAACP in the wake of the Hinton case.

The timing of Malcolm X's emergence from prison coincided with fundamental and profound shifts in American race relations on the national landscape. Nothing was perhaps more socially and racially jarring at the time than the sudden appearance of the African American struggle for civil rights into national politics. Beginning with legal developments such as the US Supreme Court decision in *Brown v. Board of Education of Topeka* (1954), which ended the "separate but equal" doctrine of legally sanctioned racial segregation established in 1896 by the Court in *Plessy v. Ferguson*, the legal successes of African American civil rights organizations had national implications and presented a significant means of challenging segregation wherever it existed.[12]

Among other things, the NAACP had been instrumental in financing the case and raising public awareness around the constitutionality of segregation as a matter of law. That the legal system could be used in such an effective manner to bring about social changes in the lives of African Americans could not have gone unnoticed to someone as politically astute as Malcolm X, who had thoughts of becoming a lawyer as a child and would later talk of bringing the United States before the United Nations on charges of violating the human rights of African Americans as an adult.[13] Yet, notwithstanding the significance of the Brown decision, it was the brutal murder of a fourteen year-old Chicago youth named Emmett Till in Money, Mississippi in 1955

that brought American race relations to the forefront of the nation's attention at the time.

Unlike so many other events of the period, Till's murder and the subsequent acquittal of his alleged killers acted as a catalyst and mass rallying cry for African Americans who were frustrated with the pace of civil rights efforts around the country.[14] The tragedy made international headlines and was unquestionably on the minds of African Americans in Montgomery, Alabama during the three months prior to their boycott of that city's public transportation system. The nation's attention was again drawn to the African American struggle for civil rights some two years later when African Americans publicly challenged *de facto* segregation in Arkansas' public schools. On September 4, 1957, nine African American students in Little Rock attempted to integrate Central High School, the city's all-white public high school, creating a national showdown between federal and state power. Five days following the beginning of the crisis in Little Rock, President Dwight Eisenhower signed the Civil Rights Act of 1957, calling for the protection of voting rights and the creation of the US Commission on Civil Rights.[15]

Although Eisenhower understood the commission to be a politically expedient way of defusing questions surrounding his administration's management of the nation's progress on race related issues, the commission did have some features that could have been of potential benefit to the NOI's emergent struggle to defend the civil liberties of its members. Despite the fact that the commission had no regulatory powers with respect to government agencies, it served as an investigatory body with congressional subpoena powers to determine the root causes of racial conflict and discrimination in American society.[16] Moreover, the commission's mission statement obligated it to " . . . study and collect information relating to discrimination . . . because of . . . religion . . .; appraise federal laws and politics with respect to discrimination . . . because of . . . religion . . .," and "submit reports, findings, and recommendations to the President and Congress."[17] These events—as significant as they were—represent a fraction of the major events occurring at the same time that Malcolm X was developing his political and social analysis of American society.

Of far greater consequence for the evolution of Malcolm X's political and social consciousness were the anti-colonial and anti-imperialist movements taking place across the world. One of the most significant events heralding this new shift in international relations between primarily Western governments and their former colonies was the Bandung Conference of Non-Aligned Countries. On April 18, 1955, twenty-nine countries met for a week-long conference in Bandung, Indonesia, to outline key principles establishing themselves as independent parties to the ongoing crisis between Western and Communist states. Among other noticeable assertions, the attendees signed a

charter agreeing to respect human rights, political and territorial sovereignty, and racial equality. Given its call for racial equality, its rejection of colonialism as a form of political organization and its racial makeup, African American newspapers read the conference as a critique and challenge to white supremacy as well. Malcolm X was particularly struck by the implications of the event and called for a meeting of African American leaders around similar concerns on the conference's fourth anniversary on April 23, 1959.[18] Likewise, the advent of the Cuban Revolution in 1956—although ideologically uncommitted to a policy of non-alignment—resonated with Malcolm X's views on the struggle of oppressed and indigenous populations against colonial domination.[19] The acquisition of independence by Ghana in 1957, however, was perhaps the decade's clearest and most significant event signaling the ability of African people to determine their political, social, and economic fortunes in their best interests.[20] Each of these events collectively signaled that people of African descent were bringing change to their sociopolitical conditions, and Malcolm X sought to place the NOI in that discussion on a practical level.

At the same time, Malcolm X's conversion to Islam during his incarceration provides a background for understanding his concern regarding the treatment of NOI converts in prison. To begin with, his life provided living proof of the transformative potential inherent in the Honorable Elijah Muhammad's teachings while incarcerated. There was also the example of Elijah Muhammad, who established Islamic study groups for prisoners during his incarceration at the Federal Correctional Institution at Milan, Michigan.[21] Moreover, recruiting new members from prisons could possibly magnify public support and recognition of the NOI as a positive force in African American communities. To this end, Malcolm X continued to personally maintain relationships with incarcerated African Americans following his release from prison in 1952, while encouraging other members to do the same.

Although the geographic scope of Malcolm X's communications with prisoners would eventually extend across the nation to those cities where the NOI had established temples, much of his initial communications with prisoners involved writing letters to African American inmates at two of his former places of incarceration. From 1952 to 1956, Malcolm X consistently wrote to inmates at the Massachusetts State Reformatory in Concord, where he spent the second of his six year sentence for larceny, breaking and entering, and illegal possession of a firearm, and Norfolk Prison Colony.[22] Following his meteoric rise in the ranks of the NOI, Malcolm X used his status as the NOI's national representative to request and forward small offerings from the NOI's Temple No. 14 in Hartford and Temple No. 9 in Boston to NOI members imprisoned at Concord and Norfolk.[23]

The development of Malcolm X's ministry to prisoners incarcerated in Massachusetts is not surprising given his strong ties to the region. Boston was home to his older sister, Ella Collins, who provided guidance to Malcolm X during his turbulent and troubled years as a teen in the city.[24] Moreover, NOI Temple No. 9 was also home to Malcolm X's new protégé, Louis Walcott, a former calypso singer whom he recommended minister the temple.[25] Likewise, his relationship with the nearby temple in Hartford, Connecticut, had existed from the temple's very beginnings. Given the proximity of these two temples from both prisons, it seems only logical that he would maintain communications with NOI inmates at Concord and Norfolk, which in the case of Boston were both approximately thirty miles away.

As a former inmate at the prisons in Concord and Norfolk, Malcolm X was only too familiar with the difficulties associated with attempting to practice the tenets of his faith while being incarcerated. Much like correctional institutions in many other states, the prison facilities in these two cities were unaccustomed and unfamiliar with accommodating faith-based requests outside of the Judaic, Catholic, or Protestant Christian religious traditions. Understandably, while incarcerated at the Norfolk Prison Colony, Malcolm X and several other imprisoned NOI members rearranged the material in their cells so that their belongings faced east, grew beards, and refused to take typhoid shots or eat pork.[26] In doing so, Malcolm X and his religious cohort were simply following the example established by Elijah Muhammad and his son Emmanuel some seven years earlier. Like the treatment that Malcolm X encountered at Norfolk, prison officials at Milan had similarly denied Muhammad access to a Quran, and refused to observe Muhammad's strict Islamic dietary considerations.[27]

In this sense, both Malcolm X and Muhammad shared a tradition of religiously motivated prison activism; but, whereas Elijah Muhammad's subsequent actions suggests that he saw his efforts in prison as temporary but necessary resistance measures, Malcolm X moved to permanently alter conditions for Muslim prisoners by encouraging incarcerated NOI members to file petitions with the courts demanding that their civil liberties and civil rights be protected. Claude Clegg, for example, suggests that following his release from prison, Elijah Muhammad took on, "a less activist, even conservative, style of leadership, such as a desire to minimize political and legal pressures that could inhibit the economic expansion of the movement."[28] Where Muhammad saw police raids on NOI temples and an increase in federal scrutiny of the NOI as ominous signs that threatened the ability of his religious community to recruit and retain members, Malcolm X interpreted these same occurrences as evidence of a government that was uncertain about its future in a global climate of political change. Put another way, Elijah Muhammad prioritized changing the economic and social realities of individual African Americans by rehabilitating their moral self-image and getting

certain vices like alcoholism, prostitution, gambling, drug addiction, and adultery out of their lives. While Malcolm X shared many of these same concerns, he also realized that African American Muslims lived in a predominantly Christian society, and, therefore, the laws governing the practice and exercise of the NOI's religious beliefs needed to be changed to accommodate their religious interests. Indeed, despite Malcolm X's considerable work with NOI inmates in Massachusetts, his exchange with incarcerated NOI members in New York prisons actually made a significant legal impact on the civil liberties of African American Muslims.[29]

Following the Hinton tragedy in the spring of 1957, Malcolm X, Edward Jacko, and Jawn Sandifer formed a legal coalition to improve the current conditions and future lives of African American Muslim inmates in New York. Despite political differences over the question of integration as a suitable political strategy for African Americans, the two NAACP lawyers believed that the young minister had a gift for reforming hardened criminals. Malcolm X's success at rehabilitating inmates was so impressive that it absolutely perplexed Jawn Sandifer, who later recalled, "I can't give you the answer as to what it was, how one man could take people with criminal backgrounds—practically every one of them were people that came out of those prisons."[30] Almost immediately however, problems arose over Malcolm X's status as a religious minister. Apparently, the NOI's ethno-religious teachings and Malcolm X's former time as an inmate in a state correctional facility concerned prison officials in the state to the point where they denied him free and unsupervised access to New York's inmate population. As a temporary measure, Malcolm X, Jacko and Sandifer forged a short term agreement where the attorneys referred certain prisoners they came across in their case work to Malcolm X for counseling and guidance. But a more permanent solution would have to be found if Malcolm X was to have consistent access to New Yorkers who converted to the NOI while in prison. The break came in 1959, after prison officials had persistently denied Malcolm X access to NOI inmates in the Clinton Prison at Dannemora, New York.[31]

Established in 1845 as a center to house convict labor for the production and manufacturing of iron ore, Clinton Prison initially earned a reputation as a place frequently identified for the humane treatment of its prisoners. The penitentiary's first warden, Ransom Cook, pursued a policy of minimal discipline in his penological management, maintaining a relatively low guard to prisoner ratio, and allowing inmates access to a well-stocked library and the freedom to move about without leg irons. Like the state's other prisons at Sing Sing and Auburn, Clinton Prison was designed to be financially self-sustaining. The public impression of the prison as lax in its discipline of inmates continued, despite an investigative report by a *New York Times* journalist in 1895, which revealed that the regimen and physical conditions endured by convicts at the prison had noticeably changed. Indeed, discipline

of inmates at Dannemora had become the subject of intense public interest in 1891, after a former guard and keeper at the institution made allegations that employees at the prison routinely abused prisoners for failing to meet their quotas in manufacturing simple goods, such as clothing, toys, and tinware. These revelations would not be the last time that prison officials at Dannemora found themselves facing public scrutiny over their mistreatment of prisoners. On July 22 1929, a riot involving more than 1,300 inmates took place, with several hundreds of inmates attempting to escape by setting fire to prison buildings. In the ensuing mêlée, which lasted over five hours, guards using tear gas, shotguns machine guns, and hand grenades killed three prisoners and wounded 20 others.[32]

Major conflicts between inmates and guards appears to have remained a central concern of prison officials nearly one year later, as two New York *Times* articles revealed that approximately two hundred inmates from the ". . . mutiny of July," were being kept in isolation cells or solitary confinement.[33] Following the riot and subsequent news reports, Clinton prison implemented a series of humanitarian reforms meant to establish discipline among prisoners without widespread need for force or punishment. Unfortunately, these reforms did very little in improving the circumstances that Edward Griffin, James Pierce, Martin T. Sostre, and William SaMarion encountered after converting to Islam while inmates at Clinton Prison during the late 1950s.[34]

In existence for over a century, Clinton Prison had never held religious services for Muslim inmates or allowed a Muslim to administer Islamic teachings and rites within its walls. The prison provided inmates with routine spiritual advisement in the Judaic, Catholic, and Protestant traditions, however. This situation appears not to have been unique to Clinton; it reflected the absence of any significant Muslim inmate communities in New York's extensive prison population. Yet, after Edward Griffin, James Pierce, William Sa Marion, and Martin Sostre, all prisoners at Clinton, embraced the Islamic faith as members of the NOI, they soon discovered that prison authorities considered their new faith to be a threat to the institution's security. The four had heard about and converted to the Nation of Islam while incarcerated and requested the presence of Malcolm X to aide them in becoming familiar with the appropriate worship styles of NOI members. Nevertheless, the prison denied Griffin, Pierce, Sa Marion, and Sostre access to a spiritual advisor of their faith and refused to provide the inmates with copies of the *Quran* or NOI literature.[35] An FBI report commenting on the issue claimed that most of the inmates involved had little if any understanding of the tenets of the NOI and were only interested "in those features which enable them to complain about prison conditions and racial discrimination."[36] The observation is telling, if not ironic, for—regardless of the rationale behind their petitions—any demonstrable lack of inmate knowledge concerning the principles of the

NOI was a consequence of prison officials denying the inmates access to spiritual advisement from NOI ministers.

For his part, J. E. LaVallee, Clinton's warden—whose duties included managing the safety of the inmate population, prison staff, and day-to-day lives of prisoners—absolutely refused to consider the inmates' requests, believing them to be an affront to his authority. In fact, he responded to the "agitators," petitions by reducing their time off for good behavior and placing them in solitary confinement. No doubt, LaVallee considered the matter over when he formally answered their written request for religious literature by emphatically stating, "let me hear no more out of you about the Quran."[37] Nothing, however, could have been further from the truth.

In late November, Jacko and Sandifer announced plans to represent several complaints brought by incarcerated NOI members at Clinton Prison before the United States District Court for the Northern District of New York, in Utica. The announcement made little news, appearing in only one major African American newspaper. Despite the lack of media attention that the news garnered, the remarks could not have come at a more volatile moment given the problems then confronting the two lawyers and the NOI.[38]

For starters, Jacko and Sandifer's decision to publicly support the civil rights and liberties of Nation of Islam members potentially put their professional careers at great risk. Among other things, the decision placed them at direct odds with Thurgood Marshall, who had publicly denounced the NOI as a "vicious," group of "thugs, financed . . . by Nasser or some Arab group," only one month prior.[39] Because Marshall had received such acclaim for being popularly associated with the African American legal struggle for civil rights following his successful appearance before the US Supreme Court in *Brown v. Board of Education of Topeka*, embracing the causes of incarcerated NOI members seemed to fly in the face of his political assessments and legal direction. Moreover, although technically separate from the NAACP legal defense department in which Sandifer and Jacko worked, Marshall was director counsel of the well-known and highly influential NAACP Legal Defense and Education Fund, Inc., giving him broad connections with an army of pro-civil rights attorneys and judges across the country. The two lawyers could quickly find themselves isolated in the civil rights organization if they failed to tread carefully. And then there was the NOI and its ongoing battles with the press, law enforcement, and controlling internal conflicts.

As part of a comprehensive plan to both present the NOI's economic and social policies to African American communities while increasing the community's membership numbers, Elijah Muhammad undertook a speaking tour during the spring and summer of 1958. Unfortunately, several factors converged at the time to help diminish the NOI's public image and relationships with prominent African American social justice organizations. In July, CBS affiliate WNTA-TV aired a four-part television series entitled, "The

Hate That Hate Produced," depicting the NOI as a hate cult that preached "black supremacy," and Malcolm X as the public face of the religious community.[40] Unfortunately, Malcolm X, who—with Elijah Muhammad's blessing—had been the NOI's contact with CBS, had just left on a trip to the Middle East and was not available to help quell the public firestorm that accompanied the television series appearance. The national image of the NOI continued to sour following a speaking engagement by Elijah Muhammad in New York City's St. Nicholas Arena in August. While the event attracted over 5,500 African Americans, the NOI denied white correspondents from Time magazine and several other major news outlets access to the event, bringing official condemnation from the NAACP.[41] Similarly, the Reverend Martin L. King, Jr., president of the Southern Christian Leadership Conference, wasted no time in reproaching the NOI as a hate group that practiced black supremacy and stooped "to the low and primitive methods of some of our opponents."[42]

Nor was the NOI breaking any new ground in their decades long conflict with local law enforcement agencies. In September, Elijah Muhammad published leaked correspondence from J. B. Stoner, Imperial Wizard of the Ku Klux Klan, to New York Commissioner Stephen P. Kennedy. The letter suggested that the NOI represented a threat to law and order in the city and offered Commissioner Kennedy the support of 5,000 Klansmen to help maintain white supremacy in the city by exterminating NOI members there. Stoner requested that Kennedy supply "pistols . . . machine guns, riot guns, tear gas, and big clubs," to help accomplish the task.[43]

Perhaps the most potentially troubling challenge confronting Malcolm X, Jacko, and Sandifer was the poor timing of the announcement. Jacko and Sandifer's news statement that they would be representing the legal petitions of incarcerated NOI members came exactly one week following the departure of Elijah Muhammad and his two sons, Herbert and Akbar, to Mecca, Saudi Arabia. Although the NAACP's legal redress department would be picking up the cost of representing the inmates because of the civil rights issues involved, the notion that Malcolm X spearheaded this initiative on his own and in the absence of Muhammad could have had catastrophic consequences given the tense atmosphere existing within the NOI at the time. By the fall of 1959, rumors had been circulating for months regarding Malcolm X's purported intentions to succeed Elijah Muhammad as leader of the religious community in the event of Muhammad's untimely death. As early as that May, an FBI informant had reported that those rumors had not set well with Muhammad's immediate family and top officials located at the NOI's headquarters in Chicago. CBS's telecast of "The Hate That Hate Produced,"—which depicted Malcolm X as the national face of the NOI—only contributed to the potential for a misunderstanding between the two figures. That Malcolm X might have informed Elijah Muhammad about the pending

legal case before the news release and prior to Muhammad's departure abroad would have been of little consequence to persons who believed the precocious young minister was rapidly overstepping his authority.[44] Regardless of these potential landmines, Jacko and Sandifer moved on with the case, pressing forward with their suit against Clinton Prison on three grounds: denying Muslim inmates access to a spiritual advisor of their faith; denying Muslim inmates access to the *Quran*; and discriminating against the religious beliefs of Muslim inmates by forcing them into solitary confinement and reducing their time off for good behavior for requesting copies of the *Quran*.[45]

At trial, Jacko demonstrated a masterful awareness of the major issues involved, anticipating the key arguments of the state's defense. In his opening remarks, Gretchen White Oberman, assistant attorney general of New York, stated that prison rules forbade correspondence between inmates and "known criminals."[46] Realizing that Oberman was indirectly referring to the criminal past of Malcolm X and that proceeding forward with the issue might jeopardize the inmates' other grievances, Jacko quickly withdrew the spiritual advisor issue from their overall complaints.[47] Oberman's purpose for doing this was twofold. By raising the specter of Malcolm X's criminal past as a potential threat to prison discipline, Oberman could assert the necessity and primacy of state correctional institutions in determining matters involving prison discipline. It was a safe bet. State courts in New York had consistently refused to rule in matters involving the disciplinary policies of state correctional institutions, viewing prison discipline as an "executive function." Jacko's decision to withdraw the spiritual advisor complaint meant that the state would now have to argue that giving NOI inmates access to Qurans represented a threat to prison security. The position was wholly untenable, and, on January 5, 1960, Paul D. McGinnis, Commissioner of Correction for the State of New York, directed wardens across the state to allow inmates the ability to purchase four separate translations of the *Quran*.[48] Following these actions, the court dismissed the plaintiffs' claims of being disallowed access to the *Quran*. Moreover, the court subsequently ruled that the inmates' claim of being placed into solitary confinement as a form of religious discrimination was a matter of prison discipline and, therefore, firmly within the legal jurisdiction of state courts to decide.

In some respects, the ruling was a temporary setback. Jacko and Sandifer had argued the case before the district court because they firmly believed that the case involved concrete Constitutional issues that superceded states rights. By ruling that the inmates' alleged religious discrimination was a matter of prison discipline and sending the case to the state courts for a hearing on the matter, the fate of the inmates' petition was a foregone conclusion. Likewise, in upholding the integrity of prison discipline as a sovereign sphere of state authority, LaVallee had come away with a technical victory despite making

concessions on allowing prisoners access to *Qurans*. By all accounts, the case had drawn to a close, but as Jacko, Sandifer, and the plaintiffs would soon discover, the major issues involved were just starting.

Whatever solace LaVallee had taken in the decision was brief, however, as Jacko and Sandifer planned to appeal the case to the US Court of Appeals for the Second Circuit. In the meantime, a slew of old and new developments kept Jacko from immediately following through with this intention. On one hand, Clinton prison notified the six incarcerated NOI followers that they would be transferred to the Attica and Auburn state prisons in July. Sostre and Sa Marion were transferred to Attica, while Pierce remained at Clinton. The separation of the inmates threatened to impair their willingness to see the case through, and Griffin eventually dropped his complaint.[49]

On the other hand, in August 1960, Jacko filed claims against the city of New York totaling up to $2.4 million for the false arrest, assault, and "malicious persecution," of six NOI members. The claims stemmed from an earlier altercation between the NOI and two policemen in 1958, where police had brutally attacked all six residents in their two-story home, including Malcolm X's then pregnant wife—Betty X (Little).[50] Testimony describing the New York Police Department's reckless use of force and firearms, verbal threats, and disparagement of women and children, and forced march of the homeowners out into the bitter cold (including a five-month old baby who was still naked due to being bathed at the time of the raid) moved Jacko to tears during the trial.[51] While these two cases were ongoing, other legal circumstances developed that required Jacko's immediate attention. In March 1961, Jacko filed a libel suit worth six million dollars against two New York daily newspapers, the *New York World-Telegram and Sun* and the *Journal American*, for falsely claiming that NOI members had instigated a throng of several hundred persons into violently protesting the United Nation's handling of the crisis then taking place in Congo.[52]

It was not until June 19, 1961, when Jacko presented oral arguments on appeal, related to the case of NOI inmates, before the US Court of Appeals for the Second Circuit. In a 2-1 decision handed down at the end of July, the court ruled that the inmates were within their constitutional rights to seek legal remedy at the federal level in response to their claims of religious persecution. The court declared that religious freedom was a "preferred" and protected freedom (trumping the interests of the state with respect to prison discipline) and remanded the case back to the district court for another hearing.[53]

The ruling in *Pierce, et. al. v. J. E. La Vallee, Warden of Clinton Prison*, had national implications in its scope and effect. After the trial, an elated Jacko declared that the ruling "restrain[ed] prison authorities from interfering with the right of religion and worship except where necessary to prison management," and opened state prisons " . . . to federal judicial review of

civil rights. . . ."[54] The case immediately overturned a well-established history of legal precedent that viewed prison discipline as a matter of state law enforcement, holding instead that the treatment of inmates at state correctional facilities could—under certain circumstances—be subject to federal jurisdiction.

On another note, it could be argued that the extension of federal authority over state prisons contributed to middle-class African American civil rights leaders adding incarceration as a subject to be linked to the Civil Rights Movement in the South. The correctional institutions in states such as Georgia, Alabama, Mississippi, Louisiana, and Texas had become notorious for their brutal treatment of African Americans inmates. For instance, in the fall of 1961, civil rights workers Charles Sherrod, Wyatt Tee Walker, Bernice Johnson Reagon, and William G. Anderson experienced jailer brutality firsthand while incarcerated in prisons surrounding Albany, Georgia.[55] The threat of prison abuse for arrested civil rights demonstrators was real, and the potential for federal liability in such cases must have been somewhat reassuring to weary demonstrators. As Coretta Scott King notes, SCLC figures such as Andrew Young and Martin L. King, Jr. believed that their ". . . ally was the federal judiciary," and were constantly briefed and depended upon rulings from the federal courts.[56] The ruling gave cover and otherwise allowed professional and more traditional civil rights leaders to join grassroots demonstrators in viewing prison as an option in the African American campaign for civil rights. In the wake of the *Pierce* ruling, a new refrain, bearing the premise behind a potent new tactic of social change, began to be heard among civil rights workers in the South: "Not Afraid of Your Jails." Also, the case became something of a landmark in that it opened the way for incarcerated Muslims at other penal institutions to petition for their civil rights and liberties.[57] On the other hand, Jacko and Sandifer had caught a huge break in having the case heard and resolved so quickly.

The changing political makeup of the court was one potential setback that the two lawyers narrowly avoided by having their case heard in June. Only three months earlier, Congress voted to have three new seats added to the US Court of Appeals for the Second Circuit. In September, newly elected president, John F. Kennedy, nominated Thurgood Marshall to fill one of the three vacancies on the court. Marshall had made no secret of his contempt for the NOI or his unwillingness to view the group as a religious community, although he would later mitigate his initial impressions.[58] Despite several congressmen who sought to hold up his Senate confirmation to the court, Marshall's subsequent appointment signaled a difficult path ahead for the rising number of incarcerated NOI members submitting grievances on behalf of their civil rights and liberties.[59]

When the case appeared before the court again nearly two years later, the hearing did not end on favorable terms for the plaintiffs. The US Circuit

Court of Appeals had remanded the case back down to a federal district court to determine whether the state had violated the plaintiffs' rights to due process and the free exercise of religion. The appellate court ultimately affirmed the district courts' decision in favor of the state.[60] Although Jacko appealed the case to the US Supreme Court in late October 1963, the Court refused to grant the case a hearing.[61] In the coming weeks, the professional relationship between Malcolm X, Edward Jacko, and Jawn Sandifer would be irrevocably broken following Malcolm X's suspension from the NOI on December 4, 1963.[62] For his part, Jacko would continue to provide counsel to the NOI at key moments in its struggle for civil liberties.

Notwithstanding the setbacks with *Pierce*, Jacko's initial success pursuing the civil liberties and rights of NOI prisoners created an avalanche of other legal petitions by incarcerated NOI members requesting spiritual advising, ministration, and religious services from Malcolm X and the NOI's Temple No. 7 in Harlem, New York. On October 10, 1961, William SaMarion, one of the four incarcerated NOI members formerly imprisoned at Clinton, filed a petition in federal district court claiming that he and several other Muslim inmates at Attica Prison were not permitted to practice the religious tenets of the NOI.[63] SaMarion was looking to reintroduce the spiritual advisor issue back into the courts following the conclusion of *Pierce v. La Vallee*, where the issue had been dropped. Events were already underway, however, to resolve much of the conflict between Muslim inmates and prison officials over the question of Muslim spiritual advisors.

On November 30, 1961, one month following SaMarion's decision to file a petition with the courts, lawyers for Clarence Brown, an NOI member incarcerated in Dutchess County, New York, argued on appeal to the Court of Appeals of New York that Paul D. McGinnis had violated the civil liberties and rights of Brown and other incarcerated NOI members by denying them access to a spiritual advisor of their choosing.[64] The hearing was a significant advancement for Brown, who had endured a series of legal setbacks in his efforts to receive spiritual advisement from Malcolm X. From late March to the end of July 1960, soon after Jacko had dropped the spiritual advisor issue from the *Pierce* complaint submitted in federal district court, five NOI prisoners filed separate legal petitions requesting that the New York Supreme Court for Dutchess County direct Paul McGinnis to give them access to a spiritual advisor from the NOI.[65] In each case, the court decided that it did not have standing to rule in the case, as the plaintiffs complaints involved matters of prison discipline and were, therefore, an executive function. In addition, the court sided with McGinnis, granting his motions to dismiss the petitions altogether. After appealing their case to the Supreme Court of New York, appellate division, for the second department, on April 3, 1961, Brown and the other plaintiffs were disheartened to learn that the appeals court affirmed the lower court's ruling.[66]

If the amount of time, resources, and unfavorable rulings had left the other plaintiffs in the case feeling wary about their future chances of success in the courts, Brown remained determined in his efforts to receive the same religious rights and privileges as inmates of other faiths. By the time that the New York State Court of Appeals ruled in *Brown v. McGinnis*, on January 25, 1962, the *Pierce* case directing state courts to hear inmate petitions had already been favorably decided. The appellate court's decision to reverse the lower court's rulings and force a hearing at trial was in keeping with *Pierce* and, therefore, somewhat expected. A quite unforeseen occurrence, however, was the court's decision to "extend to petitioner and his coreligionists all the rights guaranteed by section 610," of New York's Correction Law.[67] The section in question specifically dealt with the rights of prisoners to the free exercise of religion and religious worship in the state's correctional facilities. Significantly, for the first time in its three decades of existence, a court had interpreted the activities of an NOI member to be primarily religious in nature. Yet, Clarence Brown was released from custody before his case went back to trial and no judgment was ever rendered in the matter.

The question of spiritual advisement and access to religious literature for NOI members incarcerated in New York prisons remained far from settled, for there was still the matter of William SaMarion and four other NOI members imprisoned at Attica, and their complaint against Paul McGinnis. *Bratcher v. McGinnis* went to trial on October 17, 1962, and concerned the prisoners' accusations of religious persecution and religious discrimination.[68] For its part, the state approached the trial with two key defenses. In response to the plaintiffs' claims of religious persecution and discrimination, the defense laid out the prescient need of prison officials to enforce and maintain discipline among the inmate population. Similarly, the state objected to the plaintiffs' request for access to a spiritual advisor from the NOI on the grounds that the NOI constituted a hate group and not a religious community.[69]

During the trial, the five inmates gave vivid accounts of their disparate treatment at the hands of prison authorities. SaMarion testified that prison officials at Attica had rudely rebuffed his request for a spiritual advisor from the NOI. According to SaMarion, he was told to "go to Hebrew services," after making such a request.[70] Thomas L. Bratcher, Jr. testified that he received thirty to forty days in solitary confinement and lost ninety days time served for good behavior after a prison guard overheard him questioning another prisoner over the circumstances surrounding the death of Jesus Christ. According to Bratcher, the guard remarked that his comments were "blasphemous."[71]

Perhaps the most damning testimony challenging the state's contention that the religious requests of the five imprisoned NOI members represented a threat to the orderly maintenance of prison security was a memo written by

the deputy warden of Attica to Paul McGinnis. Against the strongly noted objections of the state, the presiding Judge John O. Henderson allowed the memo to be read in court. In concluding his assessment of the NOI and its affect on prisoners, the deputy warden wrote:

> It is my feeling that some of these inmates are really *benefitting* [emphasis mine] and have had a decided change in behavior pattern since becoming converts to the religion of Islam, and I feel as long as this religion does not interfere with the orderly operation of the institution, we may derive some benefits from it. . .[72]

Here was a direct blow to one of the state's key arguments, issued by an official who was—perhaps—in the best position to observe and evaluate the impact of the NOI's teachings on Attica's inmate population. Despite this recommendation and the fact that under normal operating procedure a warden would determine the type and extent of religious instruction that could be held within a state prison in New York, Commissioner McGinnis personally intervened and made a unilateral decision that the NOI did not constitute a religion and would be barred from holding religious services in state prisons.[73]

In fact, McGinnis's own account of how he arrived at his decision on the religiosity of the NOI, as well as his performance on the witness stand, did not bode well for the state's case. During his testimony, McGinnis stated that he had reached his determination as to the NOI's religious nature after reading NOI "newspapers, magazines, and periodicals sent to prisoners. . ."[74] Other evidence revealed over the course of the trial suggested that McGinnis had taken a personal interest in thwarting incarcerated NOI members in New York's prisons access to the most basic religious freedoms enjoyed by prisoners of other faiths. In addition to independently deciding that Muslims would not be given access to a spiritual advisor of their faith, or printed material from their religious communities, McGinnis ordered wardens from across the state to submit monthly updates on the status of Muslims in the state penal system. Although the increased surveillance on NOI members was perhaps one of the most unobtrusive techniques that McGinnis used to challenge their civil liberties, there were other more noticeable changes made to prison management that impacted the lives, liberties, and rights of New York's Muslim inmate population.[75]

Easily the most blatant example of McGinnis's attempts to deny incarcerated NOI members access to a spiritual advisor of their own choosing was his decision to rewrite §610 of the Corrections Law for the State of New York, which specifically dealt with prisoners access to religious rights, such as instruction, prayer, dietary proscriptions, etc. In late June 1962, McGinnis submitted a revised copy of the law to state wardens.[76] Interestingly, the law

started off by stating that all inmates within New York's prison system had the right "to the free exercise of their religious belief and to worship God according to the dictates of their conscience."[77] This initial declaration notwithstanding, the most notable difference between the original law and the 1962 version were the changes that McGinnis had made to the section dealing with the qualifications for becoming a spiritual advisor in one of New York's prisons. Paragraph 1B of the section entitled "Rules on Religious Services in Correctional Institutions," stated that prison chaplains had to have an academic education that included "the degree of A. B. or B. S., or its equivalent, from a four year accredited college or university," and, "the degree of B. D. or S. T. B., or the equivalent from a three year seminary."[78]

Thus written, the revised law disqualified the majority of the NOI's ministers, and specifically from delivering spiritual advisement within a correctional institution in the state of New York. Moreover, for the few NOI ministers who could meet the state's standards, the law permitted them only to give prison lectures or limited spiritual advice while under the surveillance of one of the resident "chaplains of the three major faiths," which included Judaism, Catholicism, and Protestant Christianity.[79] The rules became effective on June 28, 1962, prior to the beginning of the trial, but only after significant legal challenges had been brought against correctional facilities in New York by incarcerated NOI members. In essence, the changes appear to have been an alternative means of denying incarcerated NOI members access to spiritual advisement in the event of an adverse legal ruling.[80]

One of the more troubling aspects of Commissioner McGinnis's testimony was that his statements in court conflicted with his statements in public. Although he continued to describe the NOI as a threat to prison security in legal proceedings, he suggested just the opposite in a newspaper interview during the summer of 1960, estimating that New York's prison system had no more than 100 NOI members behind its walls. Likewise, the 1959 and 1960 annual reports on correctional facilities in the state of New York that McGinnis submitted to Governor Rockefeller made no mention of the development and spread of the NOI within these facilities as a growing threat to prison discipline.[81] Nor was there any visible allocation or requests for funding to address such an issue over the same period.[82] Even with McGinnis's performance on the witness stand and these apparent contradictions, some of the more controversial court drama was yet to come.

Although court testimony over the state's treatment of incarcerated NOI members had received significant attention, the state's in-court treatment of the five plaintiffs drew far more notice in the media. During the course of the trial, the state required that the inmates be handcuffed and chained at the wrists, waist and ankles while being led and seated into the courtroom, only being relieved from this state of affairs when being called upon to testify. While Joseph F. Davis, chief administrative office for the Corrections De-

partment, was quick to point out that the requirements were standard for convicted felons, there remained the very strong possibility that such requirements could negatively prejudice the outcome of the trial in favor of the state. Likewise, the *New York Amsterdam News* drew strong comparisons between the treatment of the five NOI plaintiffs in court and the treatment accorded African Americans in the state of Mississippi, with respect to civil rights.[83] In addition to the state's efforts to constantly portray the five inmates' conversion to the Nation of Islam as a threat to prison security—either through testimony or visual cues, there were other more prescient issues that their lawyers had to overcome.

For Malcolm X, the trial was somewhat analogous to a workshop on rhetoric and debate in defending the NOI from its detractors. During the two-week affair, the state produced an abundance of evidence in its attempt to prove that the Nation of Islam constituted a hate group, as opposed to a religion. Besides the testimony of prison guards and Commissioner McGinnis, the state cited newspaper columns in which Elijah Muhammad described all whites as "devils." Over the course of three days, Malcolm X had testified on behalf of the five plaintiffs as to the religious nature of the NOI. Conversely, the state produced a professor in Islamic Studies at Columbia University, who testified as an expert witness that the NOI and its members did not belong to the Islamic faith and were not Muslims. As the state's expert witness on Islam was in the process of challenging the Islamic character of the NOI, Malcolm X passed Richard F. Griffin, a white professor on the law faculty at the nearby University of Buffalo and one of the lead attorneys for the plaintiffs, a hand-written note. The contents of the note, Griffin recalls, read, "Only true Muslims may make the pilgrimage to Mecca. [*The Honorable*] Elijah Muhammad had made a pilgrimage and been admitted. Therefore, he and his followers must be recognized Muslims."[84] Malcolm X's command of words and performance on the witness stand had genuinely impressed both Griffin and Justice Henderson.

Although he was not directly involved as a plaintiff in any of the litigation, Malcolm X had a profound influence on the expansion of civil liberties and rights to incarcerated NOI members and court recognition of the NOI as a religious community. From January 1960 to October 1961, roughly two years time, no less than thirteen inmates filed legal petitions requesting that New York courts force the state's correctional facilities to grant Malcolm X and other NOI ministers the ability to deliver spiritual ministration in state prisons. If Paul McGinnis was correct in his estimation during the summer of 1960 that there were no more than 100 NOI members in New York's prison system, then Malcolm X was directly associated with aiding or pushing over a tenth of those prisoners to fight for their civil liberties in the courts. Martin Sostre, one of the original plaintiffs in *Pierce v. LaVallee*, converted to the NOI after learning about Malcolm X's biography and hearing about the

teachings of Elijah Muhammad while incarcerated at Attica.[85] During his various terms of imprisonment, Sostre became a well respected legal activist for prisoner rights, authoring several pro se complaints challenging the treatment of NOI members in state prisons.[86] Malcolm X also provided key testimony as an expert witness on the religious nature of the NOI in state and federal court. Likewise, his coalition with attorneys Sandifer and Jacko proved a catalyst in providing competent legal support of NOI prisoner grievances. This support led to a key ruling in *Pierce v. LaVallee* that extended federal jurisdiction over state correctional facilities, allowing inmates in pursuit of their constitutional freedoms access to federal district and appellate courts.

This is not to say that Elijah Muhammad or other NOI officials did not generally support Malcolm X's activities with respect to winning religious freedoms for incarcerated NOI members, for it is highly unlikely that Malcolm X would have knowingly testified before a federal court on behalf of the NOI without Muhammad's permission. At the same time, it is apparent that Elijah Muhammad did not financially support the legal efforts of incarcerated NOI members to gain civil liberties in prison. Instead, Muhammad and many of the ministers in the NOI focused on personally converting those prisoners who had developed an interest in the religious community. "It seems that Elijah Muhammad and leaders of the FOI," writes Edward E. Curtis, "did not focus their efforts on fighting for prisoner's rights as much as they did on ministering to the needs of prisoners to which they could gain access."[87]

Similarly, it is most likely that the individuals who converted to the NOI in prison were, perhaps, more attracted to the teachings of Elijah Muhammad as opposed to the personality of Malcolm X. Incarcerated NOI members filed petitions asking that courts force state correctional institutions to recognize their civil liberties in places far removed from Malcolm X's home mosque in New York. But the legal cases emerging from NOI prisoners in New York were not only the first of their kind, but clearly requested spiritual ministration from Malcolm X in the body of their petitions. That Malcolm X was both able and willing to marshal the political and legal resources to address those petitions presents a clear alternative to the more conservative approach to the NOI's interaction with the courts and law enforcement being championed by Elijah Muhammad. This appears to have been the case not only with respect to prisons, but also in the public domain as well.

No event more clearly illustrated the ideological difference in approaches that Elijah Muhammad and Malcolm X took toward protecting the civil liberties and rights of NOI members than the killing of Ronald Stokes, secretary for the NOI's Mosque No. 27, at the hands of Los Angeles Police Department (LAPD) officers on April 27, 1962. As members were filing out of the mosque just before midnight on that date, an argument ensued between

two of the men and a patrolman who suspected them of selling laundry on a public street without a business license. In the melee that resulted, seven NOI members were either shot or seriously injured, with Stokes having been shot through the heart by LAPD officer D. J. Weese.[88] Alhtough Weese testified that he knew that Stokes was standing unarmed with raised hands when he shot him from approximately eight feet away, an all-white coroner's jury found that his actions constituted "justifiable homicide," in the line of duty because Stokes had made a "menacing," gesture in his direction. It was the first time that an NOI member had actually died as a direct result of physical conflict with law enforcement.[89]

The available evidence suggests that Malcolm X, who Elijah Muhammad had sent to Los Angeles to handle the affair, wanted the NOI to take immediate and direct action. While in Los Angeles, he referred to the LAPD as a modern "Gestapo," and blasted the local press for supporting the LAPD's version of events without ever having contacted or questioned local NOI members. He also iterated his personal desire to have the NOI take immediate action against the LAPD to his subordinates back in New York. Much to his embarrassment, however, Elijah Muhammad cautioned him against advocating any direct or physical confrontation with the city's law enforcement.[90] Even the possibility of pursuing a case in civil court, an approach that Malcolm X had advocated at other times through his associations with Jacko and Sandifer, seemed to disinterest the NOI's leader. In the end, not only would the verdicts of the coroner's jury stand, but Elijah Muhammad also made Malcolm X tell the NOI's membership at Mosque No. 27 to trust in God, as opposed to making any concrete and unified protest in response to the police raid.

Malcolm X was therefore in the unenviable position of having to publicly contradict the NOI's teachings on justice being a tangible reality. "God will give us justice," he declared, at a public rally in the days following the tragedy. "I'm thankful there is a God in heaven who can intercede and give justice to those who are incapable of giving justice. . . . we will turn to God and rely upon Him for justice."[91]

It was an obvious departure in tactics and strategy for someone like Malcolm X, who had become intricately involved in putting the New York Police Department on the defensive for violating the civil liberties and rights of NOI members during the past few years. For Elijah Muhammad, the NOI's handling of the police raid was in line with policies that he had outlined years earlier. Ultimately, the differences between Elijah Muhammad and Malcolm X on how best to respond to the killing of Stokes revealed internal disagreements within the NOI's struggle to defend the civil liberties of its members. As Claude Clegg critically notes, "The response of Muhammad to events in Los Angeles underscored both his increasingly pragmatic, conservative lead-

ership style and ideological fault lines that were developing within the Nation."[92]

Notwithstanding the apparent contradictions between the NOI's actions and teachings, Muhammad's proposition that members respond to the tragedy by selling more newspapers "to let the world know he [the white man] is the devil," proved the basis of a far more subtle approach to the NOI's struggle for civil liberties.[93] In existence since 1961, the development of *Muhammad Speaks*, the NOI's newspaper, reflected the religious community's belief that increasing its social legitimacy as a religious institution through controlling its public relations presence was critical to defending the rights and liberties of its members.

NOTES

1. Muhammad, *Message to the Blackman*, 323.
2. Clegg, *An Original Man*, 91.
3. Clegg, *An Original Man*, 119.
4. Muhammad, *Message to the Blackman*, 161.
5. Ibid., 162.
6. Ibid., 163.
7. "Monroe Case Nov. & Dec.," *Muhammad Speaks*, October/November, 1961, p. 12.
8. "Muslims Granted New Hearing," *Muhammad Speaks*, January 1962, p. 1, 3.
9. Muhammad, *Message to the Blackman*, 219. Elijah Muhammad's disbelief in spiritual or non-tangible forms of existence was not limited to the idea of justice alone, but included concepts such as god, hoodoo, and ghosts. For further discussion, see Gomez, *Black Crescent: The Experience and Legacy of African Muslims in America*, 301.
10. Clegg, *An Original Man*, 175.
11. Ibid., 111.
12. James, *Root and Branch*, 228-233; Clegg, *An Original Man*, 109–110; Smallwood, "The Legacy of Malcolm X's Leadership," 6.
13. Malachi Crawford. "Malcolm X and Human Rights: An Afrocentric Approach to Reparations," In *Malcolm X: An Historical Reader*, eds. James L. Conyers, Jr. and Andrew P. Smallwood (Carolina Academic Press, January 2008).
14. Clenora Hudson-Weems, *Emmett Till: The Sacrificial Lam of the Civil Rights Movement* (Troy, MI: Bedford Publishers, Inc., 1995), p. 83–85.
15. Henry Hampton and Steve Fayer, *Voices of Freedom: An Oral History of the Civil Rights Movement from the 1950s through the 1980s* (New York: Bantam Books, 1991), 35.
16. Mary Frances Berry, *And Justice For All: The United States Commission on Civil Rights and the Continuing Struggle for Freedom in America* (New York: Alfred A. Knopf, 2009), 3, 6–7.
17. U.S. Commission on Civil Rights, *Enforcing Religious Freedom in Prison* (Washington, D.C.: GPO, 2008), i.
18. Clayborne Carson and David Gallen, *Malcolm X: The FBI File* (New York: Carroll & Graf Publishers, 1991), 174–175; Maulana Karenga, "The Sociopolitical Philosophy of Malcolm X," in *Malcolm X: A Historical Reader,* ed., James L. Conyers, Jr. and Andrew P. Smallwood (Durham: Carolina Academic Press, 2008), 106.
19. Smallwood, "The Legacy of Malcolm X's Leadership," 8–9.
20. Clegg, *An Original Man*, 121.
21. Ibid., 96.
22. Ibid, 59–60; Clegg, *An Original Man*, 105.

23. Correlation Summary—"NOI-Internal Security," (Malcolm X Little file: Part 6) p. 8, 11, 27.
24. Malcolm X, *The Autobiography of Malcolm X* (as told to Alex Haley), 1965, reprint (New York: Ballantine Books, 1988), 39–40.
25. Clegg, *An Original Man*, 249–250.
26. Ibid., 8.
27. Evanzz, *The Messenger*, 152–153.
28. Clegg, *An Original Man*, 98.
29. Ibid, 96–97.
30. Louis A. DeCaro, Jr., *Malcolm and the Cross: The Nation of Islam, Malcolm X, and Christianity* (New York: New York University Press, 1998), 100–101.
31. Ibid.
32. W. David Lewis, "Fiasco in the Adirondacks: The Early History of Clinton Prison at Dannemora, 1844–1861," *New York History* 49, no. 3 (1968: July): 284, 288, 292; "Clinton Prison at Dannemora," *New York Times*, November 24, 1895, p. 25; "The Horrors of Dannemora," *The Washington Post*, August 05, 1891, p. 4; "The Lesson of Dannemora," *New York Times*, May 07, 1892, p. 1; "3 Convicts Killed, 20 Hurt, 1,300 Riot at Dannemora," *New York Times*, July 23, 1929, p. 1.
33. "Dannemora Rebels Still Segregated," *New York Times*, April 25, 1930, p. 15; "Cruelty is Charged in Dannemora Prison," *New York Times*, June 13, 1930, p. 14.
34. "Father Booth Ends Dannemora Duties," *New York Times*, September 7, 1937, p. 21.
35. "4 N. Y. Muslim Prisoners Claim Religious Bias," *Daily Defender*, February 09, 1960, p. 4, col. 3.
36. "The Muslim Cult of Islam," p. 51, (Nation of Islam FBI file: Part 2).
37. "4 N.Y. Muslim Prisoners Claim Religious Bias," *Daily Defender*, 9 February 1960, p. 4, col. 3.
38. "Lawyers To Defend Muslim Jail Rights," *New York Amsterdam News*, November 28, 1959, p. 1, col. 5.
39. "Calls Moslem Leaders 'Thugs'," *Chicago Defender*, October 31, 1959, p. 1, col. 1. It is conceivable that Marshall's comments regarding Nasser and the NOI were deliberately aimed at sabotaging Muhammad's relationship with the Egyptian leader. The comments came less than two weeks prior to Muhammad's departure to the Middle East, where he and his delegation would be personally received as Nasser's guests.
40. Clegg, *An Original Man*, 125.
41. "Time Article Hits 'Moslem' Movement," *Chicago Defender*, August 15, 1959, p. 3, col. 7; "Portrait of a Shrewd Cult Leader," *Chicago Defender*, August 22, 1959, p. 1, col. 3.
42. "Black Supremacy Is Bad As White Supremacy, King," *Daily Defender*, August 25, 1959, p. 7, col. 4.
43. "Exposes Klan Letter to N. Y. Police Head," *Chicago Defender*, September 26, 1959, p.9, col. 3.
44. Clegg, *An Original Man,* 180–181.
45. "4 N. Y. Muslim Prisoners Claim Religious Bias," p. 4, col. 3
46. Pierce v. La Vallee, 293 F. 2d 234 (2d Cir. 1961).
47. Pierce v. La Vallee, 236–237.
48. Ibid.
49. "Call Muslims 'Headache' In State Prisons," *New York Amsterdam News*, July 16, 1960, p. 5.
50. "Muslims Sue City for $2,400,000," *New York Amsterdam News*, August 20, 1960, p. 1, col. 4.
51. Manning Marable and Garrett Felber, ed., *The Portable Malcolm X Reader* (New York, NY: Penguin Books, 2013), 125–126.
52. "Muslims Sue Dailies," *New York Amsterdam News*, 11 March 1961, p. 2, col. 7; *NOI vs. New York World-Telegram*, 1962-1963, Malcolm X Collection, Box 11, Folder 17, Manuscripts, Archives and Rare Books Division, Schomburg Center for Research in Black Culture (SCRBC), New York Public Library.

53. "Muslims Win Hearing on Prison Solitary," *New York Amsterdam News*, August 05, 1961, p. 7, col. 3; Pierce v. La Vallee, 233.

54. "Muslims Win Far Reaching Court Verdict on Religious Freedom," *Muhammad Speaks*, December 1961, p. 3.

55. Hampton and Fayer, *Vocies of Freedom*, 102–103, 105–107.

56. Ibid., 111.

57. See, for example, Jones v. Willingham, 248 F. Supp. 791 (Kan. 1965); Tate v. Hammond Cubbage, 210 A.2d 555 (Del. Super. 1965); Clifford v. Willingham 386 F.2d 153 (10th Cir. 1967); Sewell v. Pegelow, 291 F. 2d 196 (4th Cir. 1961).

58. Thurgood Marshall, *Thurgood Marshalls: His Speeches, Writings, Arguments, Opinions, Reminiscences*, ed. Mark V. Tushnet (Chicago, IL: Lawrence Hill Books, 2001), 432–435.

59. James, *Root and Branch*, 234.

60. Pierce v. LaVallee, 319 F.cd 844 (2d Cir. 1963); "Take Muslim Case to High Court," *New York Amsterdam News*, October 26, 1963, p. 7, col. 2.

61. Pierce v. LaVallee, 376 U.S. 918 (S. Ct. 1964).

62. Carson, *Malcolm X: The FBI File*, 70.

63. Bryant v. McGinnis, 463 F. Supp. 373 (W.D.N.Y. 1978); see also, Bratcher v. McGinnis, Civ. 9395 (W.D.N.Y. 1963).

64. Brown v. McGinnis, 10 N.Y. 2d 531 (N.Y. 1962).

65. Bowman v. McGinnis, 13 A.D.2d 668 (Sup. Ct. Dutchess Co. 1961).

66. Ibid.

67. Brown v. McGinnis, 10 N.Y. 2d 537.

68. Bratcher v. McGinnis, Civ. 9395 (W.D.N.Y. 1963).

69. Ibid.; "Muslims Battle State," *New York Amsterdam News*, October 20, 1962, p. 1, col. 5.

70. "Black Muslim Inmates Sue NY; Say Rights Denied in Prison," *Pittsburgh Courier*, November 03, 1962, p. 2, col. 1.

71. Ibid.; "Black Muslim Gets 'Solitary' For Blasphemy," *Daily Defender*, October 25, 1962, p. 6, col. 1.

72. "State Discusses Chaining Muslims," *New York Amsterdam News*, November 03, 1962, p. 1, col. 7.

73. Ibid., p. 2.

74. Ibid.

75. Ibid., p.1, col. 7.

76. Bryant v. McGinnis, 463 F. Supp. 380 (W.D.N.Y. 1978)

77. Ibid., 376.

78. Ibid.

79. Ibid.

80. In a separate but related case that built upon *SaMarion v. McGinnis*, Judge William B. Lawless ruled on March 29, 1965, that the 1962 Regulations were a deliberate attempt to deny Muslim inmates access to spiritual advice; see, Bryant v. Wilkins, 45 Misc.2d 923 (Sup. Ct. Wyoming Co. 1965).

81. Joseph F. David, ed., *Correction and the Young Offender: Annual Report of the State of New York Department of Correction* (New York: State of New York Department of Correction, 1960; 1961), i–iv, T-1; 1–3.

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84. Seth Woehrle, "Q&A With Richard F. Griffin," *New York Super Lawyers 2009—Upstate Edition*, September 2009, accessed December 17, 2010, http://www.superlawyers.com/new-york-upstate/article/QandA-with-Richard-F-Griffin/d63c1605-28bf-441c-8963-3d40a50d2277.html .

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86. Vincent Copeland, *The Crime of Martin Sostre* (New York: McGraw-Hill Book Company, 1970), 127–133.
87. Edward E. Curtis, IV, *Black Muslim Religion*, 144.
88. "Muslims' Story Told For the First Time," *Muhammad Speaks*, August 1962, p. 2.
89. Ibid; Evanzz, *The Messenger*, 244–247.
90. Clegg, *An Original Man*, 170–173.
91. "God Will Give Us Justice," *Muhammad Speaks*, August 1962, p. 2, 3.
92. Ibid., 171.
93. Clegg, *An Original Man*, 172.

Chapter Six

The NOI's Press for Social Legitimac

By the early 1960s, the NOI had clearly demonstrated a willingness to use the courts and competent legal counsel in a bid to protect the civil liberties of its membership. These efforts had nominally resulted in the NOI achieving a state of legal legitimacy as a religious institution within American courts. Notwithstanding these significant achievements in protecting their civil liberties through the law, police raids on NOI mosques and homes in Buffalo, New York City, Los Angeles, and Monroe, Louisiana, during the same period suggested that Nation members were in fact struggling for their very right to exist as a presence in American society. Police raids proved particularly obnoxious because they violated such civil liberties as freedom of assembly, the free exercise of religion and recent court rulings that extended the fourth amendment's prohibition against using evidence gained from illegal search and seizures to law enforcement agencies at the state level.

Despite the fact that the Nation had a fairly well established history of prohibiting the possession or use of firearms during its religious services on private property it owned, at least five major police raids took place on NOI religious premises.[1] Likewise, at the behest of J. Edgar Hoover, the FBI placed increasing numbers of NOI members on federal detention lists in case of a national emergency, regardless of the fact that the Department of Justice had forwarded memos to that agency stating that the NOI as a religious body was not in violation of any federal or state law.[2] This disconnect between the civil liberties won by NOI members in court and the ability of NOI members to actually enjoy and practice these freedoms in their everyday lives provided the basic impetus for Nation of Islam members to develop new ways to challenge the suppression of their religion.

Politicians and law enforcement officials were key figures in helping to construct the NOI as an un-American, subversive and pro-communist group. Through the use of congressional hearings and police raids, these two groups promoted the public perception of the NOI as a threat to national security. Usually based on the teachings of the NOI, moreover, the government led efforts to curtail the NOI's first amendment rights to free speech, assembly and freedom of religion. The political maneuvering and drama surrounding one particular court ruling in favor of the NOI provides a case in point.

Soon after Elijah Muhammad instructed his followers to redouble their efforts at selling *Muhammad Speaks* in the wake of the Ronald Stokes killing in Los Angeles, another event threatened to damage the NOI's public persona. Although the legal efforts by incarcerated NOI members to be accorded the free exercise of religion within federal and state correctional institutions received notable attention within certain quarters of the Nation, their actions had failed to generate any sustained interest on a national level. All of that changed on Thursday, August 2, 1962, when Congressman L. Mendel Rivers, a Democrat from South Carolina, stepped onto the floor of the House of Representatives and introduced a resolution calling for a congressional investigation into the "ideology, purposes, and activities of a society known as the Nation of Islam."[3] Rivers claimed that because the group was dedicated "to murder, naked violence, hatred, mugging and yoking," and "founded on the premise that the white race is totally evil and should be eliminated by the black race," the NOI represented a subversive threat to the country's national security interests.[4] Representative Francis E. Walter, a Democrat from Pennsylvania, Chairman of the House Un-American Activities Committee, echoed Rivers' critique, claiming "It appears to be clear that on the simple basis of what the Muslims teach, they are subversive to our form of government and pose a growing threat to our internal security."[5] Congressman Walter followed this statement with the bold accusation that the Communist Party was attempting "to work for a united front type operation with the Muslims."[6] The nationally publicized allegations put the NOI under intense scrutiny for the next three weeks. Upon closer examination, however, the two congressmen's charges appeared to have resulted from incarcerated NOI members demanding they be given certain civil liberties at a local reformatory over the course of the previous two years.

The immediate pretext for Congressman Rivers' call for a congressional investigation into the NOI was a prison riot by 23 inmates at the District of Columbia Youth Correction Center at Lorton, Virginia. On Tuesday, July 31, 1962, two days before Rivers delivered his speech on the floor of the House, approximately two-dozen Nation members at the reformatory staged a riot protesting the continued inclusion of pork in their meals.[7] The protest apparently came after Lucius X (Brown), the local minister of the NOI's Mosque No. 4 in Washington, paid a visit to the young Muslims.[8] The demonstration

quickly ended after officials at the correctional center agreed in principle to the rioters' demands, including pork-free meals, the ability to cohabitate amongst themselves and regularly scheduled time for religious worship. NOI followers and prisoners in another dormitory at the center rioted a second time when correction officials decided to transfer the initial group of protesters to the District of Columbia Jail. Although prison guards used tear gas to stop the second riot, no serious injuries resulted from either disturbance and at no time did prison officials appear to be in danger of losing control of the situation.[9] That the riot had provided a motive for a congressional inquiry into the Nation as a subversive threat to national security seems even more remarkable given the reasons behind the inmates' decision to protest.

Contrary to what Rivers depicted as a violent organization with communist influences, the riot emerged out of growing inmate frustration over the reformatory's steadfast refusal to comply with court decisions recognizing the Nation as a valid religious community and ordering the center to refrain from denying its Muslim population the same rights and privileges as inmates of other faiths. On July 2, 1962, the US District Court for the District of Columbia found that the faith of Nation members incarcerated at the District of Columbia Jail constituted a valid religion.[10] The plaintiff in the case, William T. X (Fullwood) had sought a court order forcing Donald Clemmer, Director of the Department of Corrections for the District of Columbia, to discontinue practices and policies at the jail that interfered with the practice of his religion. Eight days later, in what became known as *Fulwood v. Clemmer*, US District Judge Burnita Shelton Matthews ordered the prison to return the plaintiff back to the general population at Lorton, and to allow Fullwood and other Nation members space and time for religious worship.[11] Initially, Fullwood had been a prisoner at the reformatory in Lorton, but correction officials there gave him two years solitary confinement at the district jail for protesting the reformatory's discrimination against Muslims. After arriving at the district jail, prison officials intercepted and suppressed his correspondence to his attorney, forcing Fullwood, a nearly illiterate prisoner, to file a *pro se* complaint in district court.[12] Despite the fact that the petition originated out of the district jail, however, Judge Matthew's order specifically addressed prison regulations at the reformatory as well. The reformatory's decision to send 25 Nation members to the district jail for protesting its policies in early August was not only a legal about-face but a repeat of the Fullwood experience. For his part, Rivers resolutely believed that Judge Matthew's decision had caused the riot at Lorton, and went as far as calling her "naïve," for ruling that the Nation's beliefs constituted a religion instead of a "militant organization."[13]

Nor did Director Clemmer initially believe that the NOI constituted a subversive or even regional threat to prison security. As late as May 28, 1960, Clemmer revealed in an interview with *Washington Post* staff reporter

Daniel Greenberg that the fifty or so Nation members imprisoned at Lorton were "well behaved," and had "caused no disturbances."[14] By that July, however, Clemmer's position had noticeably changed as an increasing number of Nation members sought relief in the courts to stop what they viewed as religious discrimination by prison officials. The *Washington Post* cited a report by Donald Clemmer, which revealed that Nation members presented "increasing difficulties," at the district's reformatory. "This quarter has seen the outcropping of fifty Muslims whose hostility and lack of conformance have made difficult situations, especially at the reformatory division . . . ," Clemmer wrote.[15] Like correction officials at so many other facilities where Nation members had filed legal petitions seeking to change their conditions, Clemmer placed himself in the difficult position of having to claim that prison security remained a manageable affair while projecting the religious requests of NOI members as being unruly, disruptive, and a challenge to prison authority. Nevertheless, the lawsuits kept coming.

Even before Judge Matthew's decision in *Fulwood*, the courts had clearly ordered officials at Lorton to adjust their policies and accommodate the worship styles of Muslim prisoners. In late May 1962, almost a month before the *Fulwood* decision, the United States Court of Appeals for the Fourth Circuit ordered the Commissioners of the District of Columbia and prison officials at Lorton to grant Theodore X (Sewell) and Joseph W. Watson the ability to correspond with Lucius X and other ministers in the Nation, time and space for prayer, and copies of the Holy Quran.[16] The inmates were initially denied the right to seek relief in federal district court, but eventually won the right to a hearing in May 1961.[17] On a somewhat similar note, James A. Childs and James C. White, also Nation members held at Lorton, filed petitions in district court, but had their complaints dismissed in October 1960 for failing to reconcile their grievances with prison authorities beforehand.[18]

For a while, events appeared to get progressively worse for the NOI as the probe continued to gain momentum in the House. Francis Walter had submitted the Committee on Un-American Activities' (HUAC) resolution to the House Rules Committee for approval because of questions surrounding the legality of the probe. The US Supreme Court had consistently held in recent years that congressional hearings had to have "legislative intent," in order to be a constitutionally valid function of Congress.[19] Because the US Constitution denies Congress the power to make laws with respect to religion, and Judge Matthews had ruled that the beliefs of the Nation were religious in nature, Walter's feared that a legal issue might arise regarding the intent of any hearings into the beliefs of the NOI. In a resolution of its own, issued on Tuesday, August 14, 1962, the House Rules Committee approved Walter's probe, temporarily setting aside questions about the investigation's legality and echoing Walter's allegations that the Nation was "undemocratic and subversive."[20] Given the negative publicity that the Nation had already re-

ceived in the national press following the killing of Ronald X (Stokes) in Los Angeles just two months prior, the looming specter of a congressional investigation that might adversely affect the legal cases of incarcerated NOI members around the country was the last thing the group needed at the time.[21]

Approximately one week following the rules committee's decision, the belief that the proposed investigation would continue to move forward became uncertain as challenges to the hearings arose. Apparently, several committee members still had unresolved questions surrounding the legal repercussions of any action the committee took as a result of its findings. An article appearing in Chicago's *Daily Defender* on August 22, suggested that the committee was finding " . . . so many obstacles," to its plans to investigate the NOI that the " . . . show may never get on the road."[22] In September, the Chicago Committee to Defend the Bill of Rights waded into the drama by vocally announcing its opposition to any congressional probe into the beliefs or practices of the NOI. The problem, suggested the committee's executive director, the Rev. William T. Baird, was ". . . whether Congress should authorize a new fishing expedition which violates the First Amendment guarantees of freedom of religion, speech, press and assembly."[23] It also remained doubtful as to whether or not the probe would be approved in a vote by the full House of Representatives. Noting that the NOI was a religious community, Malcolm X openly questioned why the committee chose not to investigate race in the theological interpretations of Jews, Catholics, or Protestants.[24] Indeed, despite Representative Walters' initial suggestion that the NOI should be investigated ". . . on the simple basis of what [they] teach," the hearings never got off the ground.[25]

Whether real or imagined, it appears that the Nation wielded some political influence based upon the committee's decision not to pursue a probe. For starters, there was considerable opposition to the investigation into the NOI from African American politicians in the Midwest and Northeastern United States. In addition to the Chicago-based Committee to Defend the Bill of Rights, Congressmen Charles C. Diggs of Michigan, Adam Clayton Powell, Jr., of New York, and Robert Nix of Pennsylvania, expressed strong opposition to the probe's advancement.[26] Although the Nation's official policy prohibited its members from voting, each of these politicians represented congressional districts where the Nation had a significant impact on African American political discourse and could potentially threaten an incumbent congressman's bid for reelection through withholding an endorsement.

Among the three aforementioned congressmen, Rep. Powell, in particular, had reason to be concerned about staying in the good graces of the Nation. By 1961, there was circumstantial evidence to suggest that Malcolm X could pose a significant challenge to Powell's reelection to Congress. Given Malcolm X's impressive oratorical skills and ability to organize mass rallies in Harlem, it would seem highly unlikely that someone with Powell's

political astuteness would be unaware of Malcolm X's presence and influence. In fact, Charles Hamilton, Powell's biographer, suggests that he paid close attention to Malcolm X's public charisma and organizational capabilities, and often sought to align himself with the NOI minister at public events.[27]

For all of the talk coming out of the HUAC about the NOI being "Un-American" and subversive, there appeared to be little in the way of factual evidence that actually substantiated these allegations. News reports appeared in the Chicago *Daily Defender* claiming that neither the justice department nor the FBI considered the NOI to have subversive capacity or intention, or harbor communist sympathies. In fact, these two agencies could speak so authoritatively on the issue precisely because the NOI had been the subject of government investigations into its teachings for the past two decades.[28]

However unwanted the threat of a congressional investigation was for the NOI, it was not the first time a federal or state body had attempted to define the group as being subversive, un-American, or holding communist sympathies. J. Edgar Hoover had inquired into whether or not the NOI could be prosecuted as a threat to the internal security of the country as early as 1960. The inquiry stemmed from a decision by Malcolm X to meet with Cuban Premier Fidel Castro at New York's Hotel Theresa in September. The move personally upset Elijah Muhammad, who publicly distanced himself from Castro while simultaneously disavowing any affinity or ideological compatibility with communism.[29]

One month later, the FBI produced a summary analysis of the NOI that concluded the group was ". . . not at the present time either large enough or powerful enough to inflict any serious damage to this country."[30] The analysis also found that there was no evidence linking the NOI with the Communist Party and cited numerous examples of NOI ministers rejecting communism as early as 1952.[31] Notwithstanding these findings on the NOI's capacity or intentions to overthrow the government, the analysis still suggested on the very next page that the government should take preemptive measures to neutralize the growth of the movement. "Based upon an analysis of the rabid teachings of this group," the summary stated, "it is definitely considered that these people present a threat to the internal security of the United States."[32] For Hoover and the FBI, therefore, the NOI's teachings and beliefs were the primary issue.

It would seem, however, that the FBI's concerns were misplaced, as the federal government's take on the legality of the NOI's teachings had been well established by the early 1960s. Despite its calls for African Americans to establish a separate state " . . . on this continent or elsewhere," and be exempted from paying federal taxes, the NOI's vision and catalyst for national change was bound up in a distant, theologically based judgment day brought about by an extraterrestrial spaceship that Elijah Muhammad called

the "Mother Plane."[33] Not surprisingly, in a direct response to Hoover's concerns about the subversive intent of the NOI, then-assistant U.S. Attorney General J. Walter Yeagley stated that ". . . the First Amendment would require something more than language of prophecy and prediction and implied threats against the Government to establish the existence of a clear and present danger to the nation and its citizens."[34] Yeagley was speaking from experience, as the justice department had failed to convict NOI members on charges of sedition some two decades earlier at the outset of America's entry into World War II.

Neither the FBI's conflicting analysis or the justice department's assessment proved relevant in halting other government-led investigations into the NOI as a subversive threat to the nation's security. In October 1961, approximately one year following the FBI's report on the NOI and almost a year prior to the HUAC probe, NOI teachings became the subject of controversy after the California State Senate's Fact-Finding Subcommittee on Un-American Activities issued a report to the state legislature claiming that the group was Un-American and operated schools "for the indoctrination of young Negroes with race hatred."[35] In addition to the negative publicity that the specter of congressional hearings into the NOI's teachings, beliefs, and activities had on public perceptions of the religious community, the NOI became a target for other groups who socially constructed the NOI in a similar fashion.

Another group that played a significant role in the social construction of the NOI as a militant, extremist and subversive organization with communist sympathies, and who also worked in concert with law enforcement and government agencies, was the national print media. In fact, leaking semi-factual information about the NOI to national media outlets became a routine practice by agencies such as the FBI during the early 1960s.[36] Examining several major mass-market American news magazines (*Time*, *Newsweek*, *US News & World Report*, *Life*, *Esquire*, *Reader's Digest*, and the *Saturday Evening Post*), Sean McCloud identified three similar themes that dominated both federal and state governmental bodies and national print magazine depictions of the NOI during the period. First, these two groups depicted the NOI as a movement backed by foreign interests. Second, both federal and state agencies and national print magazines suggested that the NOI culled its membership almost exclusively from prisons and the African American "lower-class," implying that NOI members were simple, uncritical, and naturally attracted to messianic type cults driven by religious zeal and leaders with dominant and autocratic personalities. Third, and lastly, depictions of the NOI in national print magazines mirrored perceptions by federal and state bodies that the group was a political organization and not a religious community.[37] Unsurprisingly, while government agencies and national print magazines shared an inability to offer any conclusive evidence linking the NOI to

the spread of communism or subversive activities, both groups consistently spoke of the NOI as a potential threat to national security. These portrayals appear to have been the norm rather than the exception, as McCloud found that " . . . from 1959 to 1963, one mass-market and three special interest magazines published articles that offered alternative depictions of the 'Black Muslims.'"[38] Nevertheless, several publications did manage to buck the national trend by allowing NOI members space within their pages to define themselves.

African American newspapers, many of whom depicted the NOI not too dissimilar from government bodies and national print media while the group was still in its formative years in Detroit and Chicago, began dealing with the NOI as an established fact in African American communities by the mid 1950s. Specifically, editorial columns by Elijah Muhammad and Malcolm X appeared in the *Pittsburgh Courier*, *Los Angeles Herald*, and *New York Amsterdam News* during the period.[39] These newspapers provided the NOI with an initial and consistent public space from which to counter constructions of the group as a subversive, extremist, and militant community with communist sympathies. On some level, moreover, the appearance of NOI eschatology and social commentary in African American newspapers—coinciding as it did with increased circulation rates among these publications—can be viewed as evidence that the group expanded its presence as a legitimate social institution in African American communities. Yet, significant opposition to the NOI's ethno-religious beliefs remained in certain quarters and among certain groups.

Most notably, at least one prominent academic scholar and several leading figures in the contemporary African American struggle for civil rights depicted and defined the NOI as a violent group that advocated black supremacy, was principally political and not religious in its origins and outlook, and represented the extremes of African American political organization. Speaking to an audience of law enforcement officials, judges, and others at the University of California-Berkeley, C. Eric Lincoln, a sociologist who published the first monograph-length scholarly treatment of the group in 1961, stated that the NOI represented "a point at the extreme edge of a spectrum of protest organizations," involving African Americans.[40] Speaking before the National Bar Association in 1959, the Reverend Martin Luther King referred to the NOI as a "hate group arising in our midst which would preach a doctrine of black supremacy."[41] However pointed these individuals might have been in their condemnation of the NOI, each wearily contended that the conditions that gave birth to the NOI were rooted in the reality of African American social discontent.[42] Roy Wilkins, executive secretary of the NAACP, suggested that the NOI had "gained a following only because America has been so slow in granting equal opportunities and has permitted the abuse and persecution of Negro citizens."[43] Thus, while Lincoln, King,

Wilkins and others similarly situated limited their condemnation of the NOI to denouncing the NOI as racist, they generally refrained from suggesting that the group was either sympathetic to communism, infiltrated by foreign interests, or represented a threat to the nation's security on their own.

Ironically, this omission might have had something to do with the fact that government officials had accused the NAACP and SCLC of having communist sympathies at various points in the history of these institutions.[44] In fact, the practice by federal agencies and officials of locating divergent traditions of African American social discontent within the category of being communist inspired or affiliated appears to have been sufficiently widespread during the period.[45] So much so that the African American novelist and social critic James Baldwin noted that the accusations stood on shaky ground, generally mirrored arguments against the abolition of slavery during the antebellum period, and gave Americans " . . . yet another means of avoiding self-examination."[46] Although several African American civil rights figures appear to have refrained from defining the NOI as a subversive threat to national security that served foreign interests, at least one very prominent African American civic leader took exception to this trend and publicly constructed the NOI along lines that were coterminous with both national print magazines and state and federal agencies.

While other African American political figures were busy carefully constructing their responses to the growth of the NOI as a means of gaining leverage and position within an increasingly crowded field of civil rights organizations, Thurgood Marshall seemed self-guided in his determination to challenge any notions that the NOI represented a legitimate social institution. At a meeting of the International Association of Chiefs of Police on September 28, 1959, Marshall personally invited as many of the law enforcement authorities in attendance as would listen into a closed-door meeting where he excoriated the NOI.[47] An unscheduled guest of New York Police Commissioner Stephen P. Kennedy, Marshall had initially given a half-hour speech at the conference encouraging law enforcement to support peaceful efforts to integrate public spaces, but later spoke to the police chiefs away from the press and denounced the NOI as being un-American in both its origins and objectives.[48]

Whatever Marshall's intentions, it appears to have been a tragic decision with hazardous implications. To begin with, Marshall chose to construct the NOI as subversive in front of an international body with the physical resources and legal authority to cause and inflict substantial harm on the religious community. Moreover, at the time that Marshall made the remarks, he had extensive connections with the National Lawyers Guild and was serving as the head of the NAACP's Legal Defense Fund. In short, the chief legal counsel for the NAACP, one of the leading organizations engaged in the struggle to obtain civil rights for African Americans, essentially excused the

NAACP from assuming any moral, legal or social responsibility for protecting the civil rights and liberties of NOI members against abusive police action. In fact, Marshall not only called for the nullification of the Fourteenth Amendment's equal protection clause in matters concerning the NOI, but he also excused the police use of certain types of force against NOI members when he said, "every time a man is struck on the head it is not necessarily police brutality."[49] The headline for the story that appeared in *Mr. Muhammad Speaks*, "Thurgood Marshall Sics Cops on Muslims," could not have been more accurate.[50] One observer, Police Chief Jessie James of Charlotte, North Carolina, remarked that he was personally "impressed with Marshall's attack on the group," and would soon begin surveillance on the local NOI chapter in his city.[51] Although it remains questionable as to what overall impact Marshall's speech had on NOI relations with law enforcement outside of increasing police scrutiny of mosques that were not already under surveillance, the group was the subject of three separate police raids in three different cities in the three years following Marshall's comments. These and other attempts to construct the NOI as subversive, un-American, violent, and irreligious were consistently challenged and critiqued in the pages of *Muhammad Speaks*, an imperative dimension of the NOI's struggle to secure civil liberties.

As early as 1957, the NOI recognized the need to develop a consistent and thorough means of challenging socially hostile constructions of itself in the public sphere by the press, police, government officials, and African American civil rights leaders. In the summer of that year, Elijah Muhammad instituted three initiatives to improve the NOI's public image. First, Muhammad created a public relations fund and department within the NOI. The department was tasked with spreading the NOI's message of thrift, knowledge of self, and social uplift, and helping to control the group's public image in the press.[52] Second, he challenged NOI members to avoid conflict with law enforcement as this, too, brought the NOI bad publicity. Lastly, he asked NOI ministers to refrain from commenting on the NOI's ethno-religious teachings—as the teachings had increasingly become the subject of public ridicule—and begin touting the group's economic message. Muhammad hoped this would decrease unwanted media attention of the NOI, while increasing the NOI's reception and acceptance in African American communities.[53] Of these three initiatives, only the first eventually led to the development of the NOI's newspaper—first in 1960, and then again in 1961.

Although the exact details of how *Muhammad Speaks* began have been disputed by former NOI members, certain facts appear to be uncontested and offer a relatively clear picture of the events that culminated in the newspaper's emergence. Unquestionably, from 1958 until the better part of 1963, Malcolm X, minister of the NOI's fastest growing temple in Harlem, New York, stood at the forefront of the NOI's efforts to publicize the teachings of

Elijah Muhammad. As early as 1957, the NOI had been satisfied with expanding the presence of Elijah Muhammad's popular and controversial opinion editorial column, "Mr. Muhammad Speaks," in nationally circulating African American newspapers, such as the *Pittsburgh Courier* and *New York Amsterdam News*.[54] Despite playing a critical role in helping Muhammad secure this "precious space," Malcolm X set his sights on a far more complex endeavor. In 1959, following brief stints in Detroit and Los Angeles, where he helped establish Temple No. 27 and supported himself as a news columnist for the Los Angeles *Herald Dispatch*, Malcolm X returned to New York and began work on creating a news organ for the NOI. He purchased a used camera and routinely began collecting information about the NOI's activities in New York. "One day every month," he recalled, "I'd lock up in a room and assemble my materials and pictures for a printer that I found."[55] His efforts eventually paid off when the first issue of the NOI's new newspaper, *Mr. Muhammad Speaks*, rolled off the press and hit the streets in May of 1960. The paper's birth was neither an expression nor compendium of the personal will or initiative of one individual, however, but a response to larger social forces acting upon the NOI at the time.

An analysis of the articles, photographs, and graphic cartoons in *Muhammad Speaks* from 1960 to 1971, reveals three main themes dominating its coverage and response to social constructions of the NOI as a subversive, extremist, un-American, irreligious, hate group with communist sympathies. First, staff at the newspaper consistently characterized police harassment and brutalization of its members as religious persecution that violated the civil rights and liberties of those NOI members involved. Second, *Muhammad Speaks* challenged the labels used to construct the group as socially illegitimate by critiquing terms such as Uu-American and identifying clear ideological differences between themselves and other groups with which they were accused of having affiliations, such as communists. Third, the newspaper's staff critiqued civil rights and academic figures who claimed that the group represented an extreme expression of African American political discontent. In an inverse rebuttal of these claims, staff at *Muhammad Speaks* suggested that the tactics and strategic philosophy of groups such as CORE, SCLC, and the NAACP were rooted in traditions of powerlessness. Among the communities in which NOI members worked, traveled and sold *Muhammad Speaks*, these challenges, critiques and alternative representations became an essential feature of the NOI's efforts to project itself as a socially legitimate institution and—ultimately—secure civil liberties for its members.

Despite attempts by law enforcement, government officials, academicians, and civil rights figures to portray the NOI as an irreligious organization with principally political objectives, the evidence suggests that—in their articles, statements and letters to the newspaper, staff writers—NOI officials, and general readers used *Muhammad Speaks* to construct an alternative iden-

tity of the NOI as a religious community that dealt with theological questions concerning the role of Islam in the everyday life and concerns of believers. As Edward Curtis has shown in his work *Black Muslim Religion in the Nation of Islam*, *Muhammad Speaks* became a critical space where NOI members propagated, debated, reflected upon, and reinterpreted the official religious teachings of the group. Weekly and bi-weekly columns such as "What Islam Has Done for Me," and Women in Islam," provided a space for NOI members to debate and contest what it meant to be Muslim in America. Unsurprisingly, as conflicts between the NOI and local law enforcement agencies escalated and NOI members increasingly turned to the courts to resolve challenges to their religious beliefs, the *Muhammad Speaks'* news staff consistently began to characterize challenges to the NOI's existence in religious terms.

One of the principle ways in which contributing writers and staff at *Muhammad Speaks* offered a representation of the NOI at odds with social constructions of the group as irreligious was by consistently contextualizing perceived social injustices against NOI members not as political repression or racial discrimination, but as religious persecution.[56] In 1960, for example, a group of 51 African American religious leaders paid a visit to California Governor Edmond G. Brown to denounce the growth of the NOI as a threat to the state and claimed that NOI members were opportunistic troublemakers who did not constitute a religion. Convinced that the NOI was a purely political organization and concerned about its potential expansion in the state, the Reverend Arnold G. Schultz told the governor that the NOI " . . . is not a religion, just something to which a small group of people have attached religious emphasis."[57] Echoing the Reverend Schultz was the Rev. John W. Pressley, who assumed that the NOI represented "no qualified part of the Moslem [sic] religion."[58] Shortly after the incident, however, *Mr. Muhammad Speaks* ran a special edition with a headline labeling the move as a new "Holy Crusade" against Muslims.[59]

As opposed to simply being a rhetorical reply to a public slight, the decision by the newspaper's staff to oppose and redefine the delegation's attacks on the social legitimacy of the NOI appears to have developed as part of a larger initiative to defend the civil liberties of NOI members. The concerns raised by the religious delegation came in the wake of an ongoing state investigation into an incident where NOI members had been falsely implicated in causing a major riot at Folsom State Prison. The accusations emerged at the same time that eight NOI members from the prison had filed a writ of habeas corpus with the California Supreme Court seeking permission to practice Islam. Although a subsequent investigation into the disturbance by California State Attorney General Stanley Mosk cleared the NOI prisoners of any wrongdoing, the newspaper's special edition possibly mitigated any impact that the delegation's visit might have had in creating a groundswell of public

support against the NOI during their legal proceedings and over the course of Mosk's investigation.[60]

Occasionally, the newspaper's staff and editors highlighted challenges that the NOI faced to its social legitimacy from civic groups as forms of religious persecution even if those groups did not identify the group as irreligious. Such was the case when the Chatham-Avalon Community Council submitted an ordinance to the Chicago Park District Administration Board attempting to prevent the NOI from building a $20 million Islamic Center on land it purchased from the city of Chicago in 1958. According to an article appearing in the Chicago *Daily Defender*, the center was to include "a library with books on Eastern and Western culture, a school with dormitory facilities for girls and boys, and a mosque."[61] Conflict appears to have arisen, however, over the NOI's plans to include a nonsectarian, nondenominational 400-bed hospital within the center. The NOI maintained that the need for the facility was self-evident, as African Americans living in Chicago had limited public access to professional medical care outside of Cook County Hospital. Led by its president, Dr. Welton J. Taylor, however, the Chatham-Avalon Community Council fought to have the city retake the land using eminent domain and construct a play area for children in the community in place of the proposed center.[62] Ultimately, the NOI settled the issue out of court with legal assistance from William R. Ming, one of Edward Jacko's former professors at Howard University.[63]

Although the entire episode was technically a setback for the NOI's economic development initiatives in Chicago, it did not stop staff writers at the Nation's newspaper from claiming a "$165,000 victory," against the city in the same special edition issue that carried the previous article concerning the Nation's presence in California. Constructed along starkly religious lines, news of the settlement appeared in a one-page photographic spread with a headline that read "Christians Block Islamic Center in Chicago."[64] Several photographs are arranged to make exactly that point, including an architectural model of the proposed center. As if to drive home the article's point, a caption underneath a photo of the location where the mosque was to be built offhandedly reads "Site at 86 Street and South Park in Chicago where Muslim plan to build Islamic Center was blocked by local christians [sic]."[65] Although both the featured article denouncing the "Holy Crusade," against NOI members in California and the photomontage depicting the NOI's loss in Chicago clearly demonstrate a deliberate effort on the part of the editorial staff at *Mr. Muhammad Speaks* to identify challenges to the Nation's existence as religious persecution, the evidence suggests that this was not limited to a lone special edition and—in fact—remained a consistent theme within the pages of the Nation's newspaper over the course of several years.

News articles involving the treatment of incarcerated NOI members, accusations of police brutality, or the denial of conscientious objector status

frequently invoked the specter of religious persecution as efforts to construct the NOI as irreligious and subversive became critical—if not consistent—themes to arguments made in legal proceedings against NOI members. This was certainly evident in *Muhammad Speaks*' coverage of a police raid on the NOI's mosque in Monroe, Louisiana. On March 5, 1961, after religious services had already gotten underway, Monroe Police Chief James Kelley and twenty-nine other policemen raided the mosque with massive force, under the guise of having received an anonymous call regarding an armed person on the premises. When the dust settled, Kelley had arrested a total of nine persons, including the mosque's minister, Troy X (Cade), and his four-months pregnant wife, on charges ranging from assault and battery to resisting arrest. For its part, the Nation quickly raised and posted $24,000 in bond money to bail the nine out of prison, while hiring James R. Venable, an Atlanta-based attorney, committed segregationist, white supremacist, and longtime member of the Ku Klux Klan, as legal counsel to represent the defendants at trial.[66] Because the assault charges stemmed from the Monroe Police Department's unsolicited entry into a place of worship, the strength of the state's case hinged on Chief Kelley's assertion that the NOI represented a subversive threat. Moreover, after being convicted and released upon appeal along with eight other defendants in the case, Minister Troy X was later rearrested and charged with advocating the violent overthrow of the U.S. government.

The case of Troy X and the other NOI members in Monroe received significant attention in the pages of *Muhammad Speaks*, which covered the story for more than a year with headlines condemning the injustice suffered by the NOI as an especially egregious example of religious persecution. An article appearing on the front page of the January 1962 issue of *Muhammad Speaks* carried a photo of Minister Troy X with the word "Victim!" in bold lettering above the image and a caption underneath that read "Minister Troy: Victim of Religious Persecution."[67] The article—written by a special correspondent to the newspaper—described the arrests of the NOI members in Monroe as "A vicious pattern of . . . persecution and ruthless religious suppression," and continued on to another page with a headline exclaiming "Where U.S. Permits Religious Persecution of Black People."[68] In yet another article, appearing in an earlier issue of *Muhammad Speaks*, writers at the newspaper placed the raid on the NOI's mosque in Monroe within the context of several other high profile imprisonments of NOI ministers. The article ended by noting "The persecution of Muslim Ministers Wallace Muhammad, Troy X and Abraham X . . . is based on nothing else but religious intolerance."[69] A separate article appearing in a 1962 issue of the newspaper and headlined "Persecution of Muslims, Purpose to Frighten," denounced similar mistreatment of NOI members in other areas of the country.[70] Clearly, the notion that these NOI members had been "persecuted," on account of

their religious beliefs was a point driven home by the newspaper's editorial staff. The newspaper's efforts to define NOI's conflicts with local and national authorities as being based in the religious persecution of the group was still in evidence some two years following the arrests of the Muslims in Monroe, as an article appearing in a February 1963 issue of *Muhammad Speaks* noted that their court cases represented " . . . one of several arms of persecution and harassment," being directed against the NOI.[71]

Another way that *Muhammad Speaks* confronted attempts to construct the NOI as irreligious was through publishing interviews of and editorials written by foreign-born Muslims or well-known African American religious figures that supported the Nation.[72] Abdul B. Naeem, a Pakistani-born Muslim, contributed regular guest editorials to the newspaper that frequently took aim at the Nation's detractors, while simultaneously lauding the group's teachings. In an October 1962 issue of *Muhammad Speaks*, Naeem scolded "so-called 'orthodox,'" Muslims who he believed had been duped into criticizing the NOI in the national press. Calling them ignorant of both American race relations and the history of Islam in America, Naeem suggested that these Muslim writers were primarily motivated by attempting to please ". . . a superior at the job, a business associate or, in the case of overseas Muslims, a 'sponsor' or 'host.'"[73] Similarly, staff at *Mr. Muhammad Speaks* reprinted an editorial written by Anwar Ali Khan, president of the Sacramento chapter of the Moslem League of America, denouncing Robert Heinze, warden of Folsom State Prison, for his persecution of incarcerated NOI members attempting to practice Islam at that institution. In a complementary article appearing on the same page as the editorial, Khan claimed that Elijah Muhammad represented "a true Moslem who has made his trip to Mecca, and practices the religion of Islam."[74]

Although editorials denouncing religious persecution of NOI members appeared consistently within the pages of *Muhammad Speaks*, news articles were not the only means by which staff at the newspaper constructed the NOI as a persecuted religious community in the face of social injustices and claims that the group was irreligious. Specifically, in addition to photographic images, news articles and editorials, cartoons became an important dimension of the paper's critique and challenge of attempts to construct the NOI as subversive or irreligious. Eugene XXX (Majied), a cartoonist who gained widespread notoriety within the NOI for his religious and politically themed drawings, became an essential and consistent voice in the newspaper's efforts to construct NOI members as victims of religious persecution. The issue of religious freedom and its extension to NOI members came under sharp critique in one of Eugene XXX's cartoons on the Monroe incident. In a cartoon strip appearing in the October-November (1961) issue of *Muhammad Speaks*, Eugene XXX depicts an incarcerated Min. Troy X and the eight other members of the NOI's mosque in Monroe, standing in a jail cell and

questioning their jailer over the legal basis for being denied civil liberties. The prison bars—drawn in the shape of a cross—carry the words "Christian (in Christ's' Name) 'Justice': Beating & Jailing of 9 Muslims (including a pregnant mother) in Monroe, Louisiana, U.S.A." Holding a copy of the US Constitution in his right hand and reaching out of the prison bars, Troy X exclaims " . . . But your own constitution says I have the right to peaceful assembly, and to worship my own God! . . ." With a gun in one hand and a club in the other, the jailer—who could easily be taken for Police Chief Kelley given his attire—slams the bars of the jail cell close. Undisturbed by what the Muslim minister has just said, the jailer replies "You said it right, boy . . . MY constitution! I wrote it for *me*! You people ain't got no rights that I have to respect!" Eugene XXX makes his point explicit in a caption at the bottom of the comic, which reads: "The problem: Does the US Constitution guarantee religious freedom only to Protestants, Catholics, Mormons, Quakers, etc."[75] By placing sacred political symbols such as the US Constitution in his drawings, Eugene XXX was pulling on well-established American traditions of freedom from religious persecution that inherently challenged and complicated simplistic constructions of the group as irreligious, subversive or un-American.

The cartoon is also revealing for what it suggests about the ethics of NOI members depicted in Eugene XXX's drawings, as opposed to the NOI's detractors. The image depicts Min. Troy X and the other incarcerated Muslims demanding political and social justice in dignified and—given the use of the US Constitution—rational terms. This was not an isolated occurrence, moreover, as the depiction of morally clean, physically strong and dignified NOI men and women proved a consistent theme within the pages of *Muhammad Speaks*.[76] In contrast to the dignified, upright portrayal of NOI members, however, African American civil rights figures typically appeared in Eugene XXX's drawings in undignified, slavish and typically servile positions as puppets of established social and political institutions.[77] For example, Dr. Martin L. King, Jr. routinely appeared in Eugene XXX's cartoons on his knees, bent forward as if he were a beggar.[78] In the September 15, 1962, edition of "LAZZ," a comic strip series by Eugene XXX that appeared in the pages of *Muhammad Speaks*, the cartoonist depicts Lazz in his yard on his knees, wearing a crown and fighting a punching bag hanging from a tree. Lazz, short for Lazarus, was a middle-aged African American male and represented those African Americans who were "lost" and had not accepted the teachings of Elijah Muhammad. After hitting the bag an initial time, the bag swings back then forth, hitting Lazz in the face and knocking off his crown. Undeterred, Lazz hits the bag a second time, only to achieve the same results. Looking beat and disheveled, Lazz raises one hand up in a gesture of surrender and says, "Muhammad's right—you can't win no fight on your knees . . . This just ain't it, baby."[79] While these particular caricatures did not

directly address questions surrounding the NOI's religious nature, they do indicate the newspaper's willingness to identify and define individuals who attempted to challenge the group's social legitimacy.

On the other hand, Roy Wilkins and other nationally prominent African American civic and academic figures that attempted to construct the NOI as irreligious often appeared as malleable political opportunists guided by financial incentives rather than the best interests of African Americans.[80] For example, in "Lincoln 'The Hustler,'" a 1962 comic strip disparaging C. Eric Lincoln, the author of the first book-length study on the NOI reflects on his newly found success: "Let's face it," he says. "Writing that book about the Muslims was a stroke of genius. It made me financially secure . . . Made me famous. . . . Now they check with me on racial matters."[81] Lincoln's study—which suggested that religion was only of secondary concern to NOI members—had been used in legal arguments attempting to deny NOI members civil liberties by proving that the Nation was not a religious organization, and therefore became subject to attack in the pages of *Muhammad Speaks*.[82]

Similarly, Eugene XXX became adept at illustrating how local law enforcement agencies not only violated American ideals of freedom in their persecution of NOI members, but constitutional guarantees of civil liberties and rights as well. In a 1963 drawing entitled "First Step to a Police State . . . ," Eugene XXX depicts the numerous legal questions that arise from the consistent invasion of NOI mosques without search warrants. The cartoon shows the lower leg and shoe of a policeman swiftly kicking down a door that reads "Muslim House of religious Worship." The words "Armed Police" and a listing of several cities where police raided NOI mosques, including "Monroe, LA," "Los Angeles," "Rochester," and "Flint, Mich." are written along the length of the leg. As the initial door falls backward, it impacts several other doors aligned like dominoes behind it. These doors bear the words "1st Amendment," "Bill of Rights," "Civil Liberties," "14th Amendment," "15th Amendment," "Laws of Courts," "Sanctity of Home," and "Freedom to Think."[83] The deconstruction of police raids against NOI mosques in both legal and religious terms was therefore important given their capacity to construct the NOI as an illegitimate social institution.

Editors at *Muhammad Speaks* were also quick to capitalize on acts contextualizing the NOI's struggle for civil rights and liberties within America's own protest traditions for religious and political freedom whenever possible. For example, an article appearing in a March 1963 issue of *Muhammad Speaks* covered the police invasion and arrests of 17 members of the NOI's mosque in Rochester, New York, in substantial detail. Like similar stories written on police brutality against NOI members, the article—entitled "Rochester Negroes Unite for Freedom: Hit Muslim's Persecution, Protest Police Brutality"—emphasized religious persecution as its main theme. In addition to the story, which noted a ". . . coldly calculated statewide plot to

create public hysteria against Muslims in New York State," two photos of demonstrators holding signs reading "We Demand Freedom of Religion," "America is a Godless Government," and "Liberty or Death," appear within the body of the text.[84] For additional repetition, the words "Liberty or Death," were visible in the caption beneath the photo and in the article's bolded quote of a sentence uttered by Malcolm X at the demonstration, where he exclaimed, "'Liberty or Death' was Patrick Henry's cry and it must be ours."[85] The use of visual cues from both the US Constitution and American Revolution had the ability to redefine constructions of the NOI as irreligious and subversive, and therefore, socially illegitimate. At the same time, these methods reveal a critical understanding and effort by *Muhammad Speaks*' writing and editorial staff to challenge constructions of the group as an Un-American organization with subversive tendencies.

In addition to providing a space where NOI members and sympathizers could challenge constructions of the group as irreligious and subversive, *Muhammad Speaks* offered a platform for critiquing efforts to define the group as Un-American, subversive or pro-communist. For example, after the California State Senate Fact-Finding Subcommittee on Un-American Activities issued a report accusing the NOI of being "un-American," an article entitled "What is Un-American" quickly appeared on the front page of the December 1961 issue of *Muhammad Speaks* challenged the vague and ambiguous nature of the accusation. Written by Elijah Muhammad, the three-page story contended that NOI members " . . . actually do not know what is American and what is un-American, as the United States of America has not instructed us as to what constitutes an American or an un-American."[86] The report could have had a potentially devastating impact on the public perception of the NOI, as it attempted to reveal salacious details about Muhammad's past run-ins with the law. For his part, Muhammad attacked the report's credibility by pointing out multiple factual inaccuracies in its accounting of his life. He also took the opportunity to play up the NOI's Twelve-Point Program, which the report had attempted to suggest was evidence of the NOI's "un-American," nature.[87]

Occasionally, the editorial staff at the newspaper chose to challenge the social construction of the NOI as a subversive and un-American group in less direct and subtler ways. Occasionally, this meant citing support of the NOI from African American elected officials and civic leaders, although it could include attempting to fashion an alternative construction of the group as it had done against efforts to label the group irreligious. For example, *Muhammad Speaks* reprinted portions of an article written by Abdul Latif Qaisi for the September 1962 issue of *Muslimnews International* that criticized the press in America for conspiring to "spread spite against the Muslims."[88] In reporting the article however, the editorial staff consistently referred to the NOI as "American Muslims," instead of the more publicly known and widely

used term "Black Muslims," which had been popularized by C. Eric Lincoln in his study of the Nation. Additionally, staff at the newspaper frequently covered or reprinted endorsements from local and national politicians who denounced the ill treatment of the Nation at the hands of government agencies. In April 1963, Joseph Walker, a special correspondent for *Muhammad Speaks*, interviewed James L. Watson, a state senator from New York, about his views on Muslims, politics and the free exercise of religion. Earlier that year, Sen. Watson had introduced a bill in the state legislature attempting to "provide equality of religious freedom and rights to all faiths, including the followers of the Honorable Elijah Muhammad."[89] When asked about his reasons for supporting the NOI despite the group's image in the national press, Watson replied, "There is no evidence that has been introduced to me to indicate . . . the Muslim faith is a bad or detrimental faith."[90] Likewise, an article carrying comments from U.S. Congressman Robert N. C. Nix of Pennsylvania appeared in a December 1962 issue of *Muhammad Speaks*, after the congressman from Philadelphia pledged to "exert every effort," to see that the civil rights and liberties of NOI members were "accorded the constitutional sanction guaranteed by law."[91] Unprovoked police raids against NOI mosques had particularly drawn the ire of Representative Nix, and he petitioned U.S. Attorney General Robert Kennedy, Governor Edmund Brown of California and Governor Nelson Rockefeller of New York for their support in helping to end the practice.[92]

Directly related to questions surrounding the NOI's American-ness were attempts to suggest the group held pro-communist leanings. Locating the position of *Muhammad Speaks*' editorial staff with respect to its support of communism is a somewhat murky and difficult undertaking, however. It is clear that NOI ministers—including Elijah Muhammad—routinely denounced communism through their public speeches, writings and private lectures as an economic and political philosophy that was alien to the NOI's traditions, beliefs, and interests.[93] While the NOI talked about the importance of cooperative economics in African American communities, it practiced capitalism, encouraged African American entrepreneurship and represented, according to Claude Andrew Clegg, "the richest black organization in American history," by 1974.[94] It is also evident, however, that NOI members and employees—including staff at *Muhammad Speaks*—provided moral support to pro-communist and socialist figures and countries on a consistent basis. At best it can be said that while the newspaper was vigorous in its rejection of attempts to label the NOI as communist inspired or supported, it was less so in its denunciation of communist and socialist states, groups and persons. Here, the efforts of *Muhammad Speaks* as an institution for improving the NOI's public relations and defending the group's social legitimacy were asymmetrical.

Although critiques of western imperialism by communist and socialist writers appear infrequently in the pages of *Muhammad Speaks* during its initial years, the newspaper began a sustained campaign of placing articles supporting communists or socialist figures and states in its pages beginning in 1964. In November of that year, *Muhammad Speaks* reprinted an interview that Robert F. Williams, former president of the Monroe, North Carolina chapter of the NAACP, conducted of Mao Tse-tung. The article quickly caught the attention of the FBI and revealed Williams' connections with Herbert Muhammad, public relations director for the NOI.[95] Articles by or about Williams would continue to appear in the newspaper throughout the following year. In an August 1965 issue of *Muhammad Speaks*, for example, editors at the newspaper reprinted statements by Indonesia's President Ahmed Sukarno, who suggested that African and Asian nations should acquire hydrogen bombs as legitimate strategies of defense against the possibility of neo-colonial threats.[96] Apparently, neither the editors at *Muhammad Speaks* nor the administrators in the NOI had established a policy to guide the newspaper's handling of communist events and issues.

This situation largely appears to have stemmed from the inability of officials within the NOI to articulate a clear and consistent message to the newspaper's editorial board with respect to the group's support for either communism or socialism. At a time when various non-Western states were either embracing, considering or acknowledging the benefits of communism or socialism as forms of governance, the breakdown in communications between NOI officials and the editors at *Muhammad Speaks* appears to have been a foreseeable casualty of the NOI's ethno-religious belief system, which romanticized historical and political linkages between people of African and Asian descent while categorizing non-whites as "Afro-Asiatics." Nowhere does the evidence of this lack of clarity manifest more clearly than in the high drama surrounding John Woodford, who edited the newspaper from 1969 to 1972.

In 1964, Richard Durham took over the responsibilities for editing *Muhammad Speaks* from the newspaper's previous editor, Dan Burley. Upon his resignation due to failing health conditions five years later, Durham personally chose Harvard educated John Woodford as his successor. Having worked at the paper as an editor-writer for only a matter of months, Woodford felt particularly qualified for the position of chief-editor. As Woodford later recalled after reflecting on his experiences at the paper some years later, Elijah Muhammad placed his job description in somewhat non-descript political terms. Muhammad simply said, "All we want you to do is tell the truth and bring freedom, justice, and equality to the Black men and women of America."[97]

Woodford's tenure as editor coincided with the editorial staff at *Muhammad Speaks* taking a consciously pro-communist and socialist approach to-

ward the collection and reporting of news throughout the mid-1960s and early 1970s because it felt encouraged to do so by the publisher—Elijah Muhammad. Although the movement would later claim that it rejected communist and socialist doctrines, Woodford interpreted expressions by Elijah Muhammad to mean that, "The Third World was our friend and—by syllogism if nothing else—the socialist-communist camp, to the extent that they supported the interests of the Third World, was also our friend."[98] Using his discussions with Muhammad as a guide, Woodford began his editorial foray into journalistic freedom. In an article reflecting on his experience as editor of *Muhammad Speaks*, Woodford aptly summarized the influence of socialist thought on the reporting and coverage of news in the weekly. He specifically asserted that " . . . *Muhammad Speaks*' most distinct feature was our appreciation of the positive traditions and socioeconomic accomplishments of the socialist countries. Here was an exercise in real press freedom, for we were rebutting the Red boogey-men demonology spread by the U.S. brainwashing mass media and educational system."[99]

It appears that at some point officials within the NOI began to feel that the group of non-Muslim journalists and editors were introducing socialist ideology into the pages of *Muhammad Speaks* at the expense of increased government surveillance and took action to limit the influence of the newspaper's editorial staff. The imprisonment of Angela Davis, a member of the Communist Party, USA, in 1970 provided the NOI with the opportunity to divest *Muhammad Speaks* of its non-Muslim leadership. Davis was accused of being an accomplice to the assassination of a judge in California. *Muhammad Speaks* was the first paper to publish an interview with the political activist after her imprisonment. A photograph taken of Davis during this interview served as the image for many of the pins sold by her defense committee. In its coverage of Davis, the newspaper was instrumental in garnering support for her release on a national and international level. John Woodford recalled the story as *Muhammad Speaks*', "biggest national impact."[100]

Despite the success of the Angela Davis coverage, some members of the NOI did not share in Woodford's appreciation for the notoriety that the story generated. Woodford later remembered that "The Muslims didn't agree with Angela Davis' political philosophy, and not a few of them were displeased to see *Muhammad Speaks* spearhead a media campaign to defend her; they felt it might draw extra scrutiny from the FBI, CIA. . . . "[101] Because the Davis stories did not elicit a direct response from the leadership in the NOI, Woodford continued his coverage of Davis' plight—believing that the group committed itself to freedom of speech and journalistic integrity. He might not have known, however, that *Muhammad Speaks*' Muslim staff members were receiving frequent calls from anonymous staff at the *Daily World*, press organ for the Communist Party, USA, praising the paper for its class analysis of world events.[102]

Munir Umrani, a former staff reporter at *Muhammad Speaks* and foreign affairs editor at the newspaper's successor, *Bilalian News,* remembered the time as a bleak chapter in the history of *Muhammad Speaks*. Umrani specifically mentioned the period between 1969 and 1973 as a time when non-Muslim writers and editors "with heavy Marxist leanings" managed to slip in articles from Novosti and Hsinhua, the national press agencies of the Soviet Union and China.[103] Although the NOI did not immediately reprimand Woodford for his coverage of Davis, his termination as editor of *Muhammad Speaks* soon followed. Several NOI members accused him of making derogatory statements against Elijah Muhammad and flirting with one of the Muslim staff members at *Muhammad Speaks*. Although Woodford knew the charges were false, he decided against defending himself when faced by his accusers. He believed it was time for him to move on.[104] Ultimately, *Muhammad Speak*'s ambivalent and often conflicting policy proved untenable, and NOI officials moved to check the newspaper's pro-communist leanings with Woodford's dismissal in 1972. Despite the internal conflict and disagreements over content and ideological orientation that appear to have beset *Muhammad Speaks* at this time, circumstantial evidence suggests that the newspaper actually expanded the NOI's social legitimacy in American society.

Overall, the NOI's decision to use *Muhammad Speaks* as a means of improving the group's public relations and confronting challenges to its social legitimacy appears to have had mixed results. Perhaps more so than any other event, the death of Ronald Stokes proved to be an early incident testing the effectiveness of Elijah Muhammad's new public relations strategy. The April 1962 killing of Stokes highlights the intense efforts by Elijah Muhammad and officials within the NOI to use *Muhammad Speaks* as a key tool for enhancing the social legitimacy of the NOI. For instance, Elijah Muhammad's demand that NOI mosques respond to the event by selling more copies of the group's newspaper dramatically increased its circulation. A survey appearing in the July 15, 1962, issue of *Muhammad Speaks* and conducted by the Department of Journalism at Lincoln University in Jefferson City, Missouri, reported that *Muhammad Speaks* was the highest circulating African American monthly in the nation. The July 1, 1962, edition of the newspaper had circulated more than 400,000 copies.[105] In fact, circulation rates at the newspaper had improved so well that during the period that *Muhammad Speaks* announced it would move to a bi-weekly publication for the first time, with " . . . plans calling for a weekly edition in the near future."[106] In comparison, a by-line just below the masthead on the front cover of the January 1962 issue of *Muhammad Speaks* stated that the newspaper had a circulation rate just north of 150,000 copies.[107] Yet, it was Herbert Muhammad, the NOI's public relations director and head of the subscription department at *Muhammad Speaks*, who publicly revealed the thinking of NOI

leaders at that time. In a published interview that he had given with staff writers at the newspaper, Muhammad stated "The more subscribers to *Muhammad Speaks*, the more effective the campaign of our people to secure equality and freedom . . . ," clearly implying that the NOI linked the overall success of the paper with the civil liberties and rights of NOI members.[108] While *Muhammad Speaks*' circulation rate provides a purely quantitative assessment of its success in challenging negative social constructions of the NOI and expanding the group's social legitimacy, there are some qualitative indicators that point to the newspaper's success in this regard.

A review of the editorials and political cartoons in the pages of *Muhammad Speaks* in the months following the killing of Ronald Stokes reveals that the NOI made a temporary—but stark—realignment of social organizations and political figures whom it viewed as having shared interests. For example, an editorial entitled, "For Justice and Unity," appearing in *Muhammad Speaks* one month after the killing of Stokes suggested any claims that the NOI and the NAACP had conflicting goals or objectives were exaggerated and outright false. Using bold lettering too highlight this point, the editorial went so far as to state:

> Muslims certainly have no opposition to the program and policies of the NAACP . . . . There is much to be admired in the heroic struggle waged by the NAACP since the days of its formation against incalculable odds. Many NAACP leaders, nationally and locally, are men and women of high intelligence and integrity.[109]

In support of the NOI's newfound assessment of the NAACP, a drawing by Muslim cartoonist Eugene (3X) Majied suggesting that the NAACP was in complete solidarity with the NOI appeared to the right of the editorial. The drawing, entitled "Tell Us Anything," depicts NAACP members standing stone-faced with arms crossed as Los Angeles Mayor Samuel Yorty (with blood dripping from his hands) attempts to quell the crowd by suggesting that the Los Angeles police department did them "a favor."[110] The implications—that the NAACP could not be scared or forced into not acknowledging the incident with Stokes—were patently clear. Roy Wilkins issued a statement—which *Muhammad Speaks* later reprinted—that the NAACP's "National Office supports fully the protest which the Los Angeles Branch has lodged in the brutal police killing of Ronald Stokes."[111] This support from Wilkins—something the national leadership in the civil rights organization had withheld despite previous encounters where NOI members had been the victims of police brutality—does appear to indicate that Elijah Muhammad made an accurate tactical assessment that the NOI's ability to control the public interpretation of the tragedy could increase the group's social

legitimacy and potentially benefit the civil rights and liberties of its members.

In addition to the NAACP, one group that began to visibly support the NOI following the killing of Ronald Stokes was the American Civil Liberties Union (ACLU). Immediately after the police raid on the NOI's mosque in Los Angeles, Hugh Manes, an active civil rights attorney in the city, and several other members of the ACLU's Valley Chapter, established the Committee for a Police Practices Review Board to petition for a citizens-based council that could review citizen complaints against local police officers.[112] In July, the California Advisory Committee to the U.S. Civil Rights Commission successfully petitioned the federal commission to open a statewide investigation into police brutality against minorities as a result of Stokes' killing.[113] Much like the NAACP, this was apparently the first time that events emerging from the denial of NOI members' civil rights and liberties had directly or indirectly moved either the ACLU or U.S. Civil Rights Commission into taking any type of action. One year later, the ACLU said that it lawyers were "ready to lend legal assistance" to 12 NOI members who were terminated from their positions in the Civil Service due to their religious beliefs.[114] The fact that the 12 NOI members were terminated five years earlier in 1958, and the ACLU was only now getting around to offering assistance illustrates just how far the NOI had come in its bid to improve the civil rights and liberties of its members through its public relations efforts.

Likewise, the NOI's reassessment of social organizations and political figures was not limited to the NAACP alone. In the October 15, 1962, issue of *Muhammad Speaks*, Eugene (3X) Majied depicts a courageous and upright James Meredith in his struggle to secure entrance into the University of Mississippi. Standing in front of an indignant Mississippi Governor Ross Barnett on a rock labeled "Constitutional Rights," Meredith defiantly exclaims, "Either I win, or YOU LOSE!"[115] The cartoon illustrated the profound implications of Meredith's actions by showing the state, federal and human rights concerns involved.

Still, *Muhammad Speaks* saved some of its most lavish and somewhat ironic praise for U.S. Attorney General Robert F. Kennedy. An article appearing in the July 15, 1962, issue of the newspaper covered a speech given by the attorney general at the National Newspaper Publishers Association's annual conference. Both Herbert Muhammad and John Ali, national secretary for the NOI, attended the conference and heard the attorney general discuss—among other things—the role of African American newspapers in advancing civil rights in the country. Kennedy suggested that African American newspapers were obligated to report both the setbacks and success stories in the contemporary struggle for civil rights. Despite the NOI having been the victim of numerous police raids over the past two years, however, *Muhammad Speaks* presented—at the very least—an uncritical portrayal of

Kennedy. Referring to the attorney general as "The youthful head of the U.S. Department of Justice," the newspaper reprinted Kennedy's claim that "No American will be denied his human rights or his Constitutional rights because of his race, creed, religion," without a hint of self-analysis as to the NOI's own run-ins with law enforcement over the nature of their beliefs.[116] The possibility that Herbert Muhammad actually took the attorney general's comments about the responsibilities of African American newspapers to heart might partially explain *Muhammad Speaks*' reporting of the event. For it was around this time that the newspaper began to feature articles about the NOI's most public and polarizing persona, Malcolm X, a lot less frequently. Malcolm X soon discovered that "Mr. Muhammad's son, Herbert, . . . had instructed that as little as possible be printed about me." "In fact," he recalled, "there was more in the Muslim paper about integrationist Negro 'leaders' than there was about me."[117]

There is insufficient edivdence to determine whether or not Herbert Muhammad's decision to increasingly exclude Malcolm X from coverage in *Muhammad Speaks* had an immediate impact on how government officials constructed the NOI. There is, however, evidence that Malcolm X's subsequent removal from the NOI and death at the hands of assassins had an impact on how major news magazines constructed the NOI. In his study of general interest and news magazine stories on the NOI from 1959 to 1968 in the *Reader's Guide to Periodical Literature*, Sean McCloud discovered a direct correlation between the death of Malcolm X and diminished coverage of the NOI in major print publications. McCloud found that mainstream news publications began to interpret the NOI as "more [of] an annoyance" than a national security threat following Malcolm X's death.[118] In fact, McCloud suggests that this was partly because "Malcolm's break with the group and later murder left journalists without their favorite source for incendiary quotes about the Nation."[119]

The apparent policy shift in the NOI's strategic use of *Muhammad Speaks* did little to thwart the national minister's support for and critical engagement of the NOI's civil liberties concerns. In fact, in January 1963, Malcolm X sent telegrams to New York Mayor Robert Wagner and New York District Attorney Frank Hogan questioning the city's harassment of *Muhammad Speaks* newspaper salesmen in Times Square. One month later, he forwarded telegrams to the Kennedy administration (both the president and attorney general) over the police raid in Rochester.[120]

In the final analysis, the NOI's efforts to use *Muhammad Speaks* as a tool for defending the group's social legitimacy and—ultimately—civil rights and liberties of its members appears to have been largely successful. Clearly, the group saw the newspaper as an effective means of correcting social constructions of the NOI as subversive, un-American, irreligious and pro-communist—all of which were labels used to justify efforts by law enforcement and

government officials to deny or challenge the civil rights and liberties of its members. Countering claims that NOI members were irreligious or subversive, staff and editorial writers at *Muhammad Speaks* were quick to denounce and reinterpret what they considered religious persecution at the hands of Christian clergymen, civil rights figures, academic scholars and law enforcement personnel. Just as effective were guest columns and cartoons by people such as Elijah Muhammad, Abdul B. Naeem and Eugene (3X) Majied that deconstructed vague and ambiguous labels such as un-American. Dealing with claims that the NOI was pro-communist proved a bit more difficult, but NOI officials were eventually able to divest the newspaper from any direct link with the ideology.

Moreover, the newspaper took pains to reassess its interpretation of several major civil rights figures and organizations in the wake of a police raid on the NOI mosque in Los Angeles and killing of Ronald Stokes. Increased circulation rates and an outpouring of support from groups such as the NAACP, CORE, and ACLU soon followed. For four consecutive months the newspaper kept the story on its front pages, even as it transitioned to a bi-weekly publication during the second week of July 1962. Ironically, the major event that took the story out of the NOI's news cycle was Congressman L. Mendel River's decision to open up a congressional investigation into the subversive nature of the group in early August. Nevertheless, decisions by Herbert Muhammad to prioritize *Muhammad Speaks* and effectively replace Malcolm X as the leading and most visible public relations component of the NOI were, by 1965, partially responsible for a shift in how mainstream print magazines constructed the group. Thus, of the three groups who had been intimately involved in developing negative social constructions of the NOI at the beginning of the 1960s, it appears that only government officials, such as politicians and bureaucrats, remained committed to the project of challenging the NOI's social legitimacy.[121]

By 1965, the NOI had developed several initiatives that would effectively defend the civil rights and liberties of its members from a position of power. Far removed from the days when NOI members would seek justice by fighting in courts or accepting imprisonment as a form of martyrdom, the religious community had come to demonstrate its willingness to use the courts, employ competently trained legal counsel, and defend its social legitimacy in public discourse through the use of *Muhammad Speaks*. As the country moved toward open combat with Vietnam and instituted another military draft, the group found itself in an altogether different position than it had been at the beginning of WWII. These advancements in the legal and social legitimacy of the group provided the context within which a new generation of NOI members sought to assert their civil rights and liberties.

NOTES

1. Muhammad, *Message to the Blackman*, 215–216. By October 1963, Elijah Muhammad had seen enough. A police raid into an NOI religious service in Flint, Michigan, caused the NOI leader to permanently forbid all whites from gaining entrance to the group's mosques.
2. Evanzz, *The Messenger*, 128, 223.
3. "Black Muslims May Be Probed By Congressional Committee," *Chicago Defender*, August 04, 1962, p. 1, col. 7.
4. "House Group Votes Probe of Muslims," *Daily Defender*, August 15, 1962, p. 2.
5. "Tries To Link Black Muslims To Communists," *Daily Defender*, August 06, 1962, p. 6, col. 4.
6. Ibid.
7. "Un-American Activities Unit May Probe Muslims," *Atlanta Daily World*, August 04, 1962, p. 1, col. 7.
8. Clegg, *An Original Man*, 159; "Black Muslim Inquiry Tentatively Approved," *The Washington Post*, August 15, 1962, p. A3.
9. "Congress May Investigate Black Muslims," *Cleveland Call and Post*, August 11, 1962, p. 5A, col. 3.
10. Fulwood v. Clemmer, 206 F. Supp. 373 (D.D.C. 1962).
11. Ibid.
12. Fulwood v. Clemmer, 295 F.2d 173 (D.C. Cir. 1961).
13. "Black Muslim Inquiry Tentatively Approved," p. A3.
14. "'Black Muslim' Group Asks Rites in Prison," *The Washington Post*, May 23, 1960, p. A1.
15. "Prison Strife Seen Caused By 'Muslims'," *The Washington Post*, July 26, 1960, p. B1.
16. Sewell v. Pegelow, 304 F.2d 671 (4th Cir. 1962).
17. Sewell v. Pegelow, 291 F.2d 198 (4th Cir. 1961); "U.S. Attacks Muslim Plea By 2 Felons," *The Washington Post*, March 11, 1961, p. A3. Although this ruling predates a similar ruling in *Pierce v. LaVallee* (1961) by two months, the ruling here deals exclusively with inmates filing grievances from federal and not state prisons.
18. "Muslim Suit By Inmates Is Dismissed," *The Washington Post*, October 7, 1960, p. B2.
19. "House Group Votes Probe of Muslims," p. 2.
20. Ibid.
21. Clegg, *An Original Man*, 172.
22. "Doubts Raised On Muslim Probe As 'Subversives'," *Daily Defender*, August 22, 1962, p. 9, col. 3.
23. "Muslim Probe Proposal Faces Hurdle in House," *Daily Defender*, September 4, 1962, p. 4, col. 1.
24. Report—"Malcolm K. Little," section B., Attitude Towards the House Committee on Un-American Activities (HCUA), November 16, 1962, 3–4 (Malcolm X, New York FBI File: 105–8999).
25. "Tries to Link Black Muslims to Communists," p. 6, col. 4.
26. Evanzz, *The Messenger*, 252–253.
27. Charles V. Hamilton, *Adam Clayton Powell, Jr.: The Political Biography of an American Dilemma* (New York, NY: Atheneum, 1991), 358–360.
28. "House Group Votes Probe of Muslims," *Daily Defender*, August 15, 1962, p. 2.
29. Evanzz, *The Messenger*, 222–223.
30. Monograph—"The Muslim Cult of Islam," sec. Conclusions, October 1960, iii (Nation of Islam FBI file: Part 1).
31. Monograph—"The Muslim Cult of Islam," sec. Rebellious Tendencies, Subversive Tendencies, October 1960, 43, 45 (Nation of Islam FBI file: Part 1).
32. Ibid., 47.
33. Muhammad, *Message to the Blackman*, 161–162, 290–291.
34. Evanzz, *The Messenger*, 223.
35. Elijah Muhammad, "What is Un-American?" *Muhammad Speaks*, December 1961, p. 1.
36. Clegg, *An Original Man*, 196.

37. Sean McCloud, *Making the American Religious Fringe: Exotics, Subversives, & Journalists, 1955–1993* (Chapel Hill: The University of North Carolina Press, 2004) 59–60.
38. Ibid., 76.
39. Clegg, *An Original Man*, 116.
40. "Chief Jenkins, Eric Lincoln, Calif. Speakers," *Atlanta Daily World*, September 30, 1962, p. 4, col. 5.
41. Jim Brooks, "Black Supremacy Is Bad As White Supremacy, King," *Daily Defender*, August 25, 1959, p. 7, col. 4.
42. Clegg, *An Original Man*, 129–130; "NAACP Delegates Condemn Black Muslim Movement," *Cleveland Call and Post*, July 22, 1961, p. 9, col. 4.
43. "NAACP Attacks 'Moslem' Cult," *Chicago Defender*, August 15, 1959, p. 1, col. 1. Congressman L. Mendel Rivers had also equated the African American struggle for civil rights with communism, suggesting that the U.S. Supreme Court was actively protecting "Communist sympathizers, fellow travels and problems directly affecting the NAACP." See Dan Day, "In the Nation's Capital," *Cleveland Call and Post*, July 7, 1962, p. 3C, col. 5.
44. David J. Garrow, *The FBI and Martin Luther Kings, Jr.: From "Solo" to Memphis* (New York: W. W. Norton & Company, 1981), 93–95; David L. Lewis, *King: A Biography*, 2d ed. Blacks In the New World, ed. August Meier (Urbana: University of Illinois Press, 1978), 257; Roy O. Wilkins, *Talking it Over with Roy Wilkins: Selected Speeches and Writings* (Norwalk, CT: M. and B. Publishing Company, 1977), 17–18.
45. Clegg, *An Original Man*, 173–174.
46. .James Baldwin, *Collected Essays*, ed. Toni Morrison (New York: Library of America, 1998), 180.
47. "Thurgood Marshall Sics Cops on Muslims," *Mr. Muhammad Speaks*, December 1960, p. 18.
48. "Police Chiefs Gather," *New York Times*, September 28, 1959, p. 31; "U.S. Police Chiefs Listen: Officer Not Law, Marshall Avows," *Atlanta Daily World*, October 2, 1959, p. 1, col. 7; "Liebowitz Draws Protest From All Over City," *New York Amsterdam News*, October 3, 1959, p. 1, col. 3; "Police Chiefs Get Integration Plea," *New York Times*, September 29, 1959, p. 34; "Marshall Sics Cops on Muslims," p. 18.
49. "2,000 Police Chiefs Hear Marshall On Integration," *Philadelphia Tribune*, October 3, 1959, p. 1, col. 2.
50. "Marshall Sics Cops on Muslims," p. 18.
51. Ibid.
52. Report—"Publicity and Recruitment of Members," SAC Chicago, October 1960, part 2, p. 26, 29 (Nation of Islam FBI file).
53. Ibid., p. 37.
54. Ibid., 29–31.
55. Malcolm X, *The Autobiography of Malcolm X*, 237–238.
56. Similarly, the notion that the NOI faced mounting "religious persecution," in the 1960s remained a consistent theme in the speeches and writings of Elijah Muhammad. See Muhammad, *Message to the Blackman*, 206–219.
57. "Muslims Unite Against New 'Holy Crusade,'" "Negro Churchmen Incite Whites Against Muslims," *Mr. Muhammad Speaks*, Special Edition (1961), p. 4.
58. Ibid.
59. Ibid.; "Politicians Join 'Holy Crusade'," *Mr. Muhammad Speaks*, Special Edition (1961), p. 4.
60. "Islam Spreads in Prisons Despite Repressive Acts," "Attorney General Clears Muslims in Prison Fracas," "Islam and the Prison Riots," *Mr. Muhammad Speaks*, Special Edition, 5.
61. Baker E. Morton, "Delay Muslim Action on Islamic Center," *Daily Defender*, August 11, 1960, p. A19, Col. 1.
62. Ibid.
63. "Chicago Blocks Muslim Plan to Build A Temple," *Philadelphia Tribune*, August 30, 1960, p. 9, Col. 2.; "Muslims Agree on $165,000 Deal For Land," *Daily Defender*, February 9, 1961, p. 3, Col. 3.

64. "Christians Block Islamic Center in Chicago," *Mr. Muhammad Speaks*, Special Edition, p. 19.

65. Ibid.

66. "Eight Muslims Given 'Lynch' Justice," "Police Invade Louisiana Mosque," *Mr. Muhammad Speaks*, Special Edition, p. 2; "Monroe Case, Nov. & Dec.," *Muhammad Speaks*, October-November (1961), p. 12. While the decision to hire Venable might appear odd, it was not illogical. The NOI had met with representatives from the Ku Klux Klan (KKK) in Georgia, two months earlier in late January. Muhammad's decision to hire Venable for the Monroe case appears to be one tangible manifestation of an agreement that developed from the meeting between the NOI and KKK to support the principle of racial separation in the South. Malcolm X, who attended the meeting along with the minister of the NOI's Atlanta mosque, Jeremiah X (Pugh), would later express regret at having formed this alliance with the Klan. The meeting between the NOI and the KKK is discussed at some length in Karl Evanzz, *The Messenger* (New York, NY: Vintage Books, 2001), 225–227. For more on Venable's political views and affiliations, see: James R. Venable, *The Light of Right, Yesterday—Today—and Forever: The Ku Klux Klan* (Tucker, Georgia, 1951) and James R. Venable, *A Short History of the Klan and Why I Have Been a Klansmen for Fifty-Nine Years* (Stone Mountain, GA: J.R. Venable, 1974). At the same time, Edward W. Jacko, Jr. was busy preparing a libel suit against two major news publications in New York, which he filed one week following the raid on the NOI's mosque in Monroe. Finally, in the pages of *Muhammad Speaks*, news correspondents covering the story wrote that the Nation could not find a lawyer in the State of Louisiana who would take the case. While the accuracy of this assertion is difficult to verify, there is evidence that race played a factor in African Americans in the South being denied bonds at the time, especially when they were perceived as political agitators. Venable's race, therefore, might have played a key role in the nine NOI members being bonded out of prison (see, "Police Invade Louisiana Mosque," p. 2). For more information on this aspect of American race relations, see Celes King III, interview conducted August 7,1985 by Bruce M. Tyler, Center for Oral History Research, Young Research Library, University of California, Los Angeles, audio recording, tape no. 5, side 2; transcript, pp. 51–53.

67. "Muslims Granted New Hearing," *Muhammad Speaks*, January 1962, p. 1.

68. Ibid., p. 3.

69. "Courts Jail Muslim Ministers; Taught Negroes in Faith of Islam Religion!" *Muhammad Speaks*, December 1961, p. 32.

70. "Persecution of Muslims, Purpose to Frighten," *Muhammad Speaks*, January 1962, p. 18.

71. "Louisiana Anti-Muslim Cases Threat to Freedom," *Muhammad Speaks*, 4 February 1963, p. 8.

72. Curtis, *Black Muslim Religion*, 38–44; "Detroit Minister Supports Muslim's Fight for Freedom," *Muhammad Speaks*, May 13, 1963, p. 21.

73. Abdul B. Naeem, "Pakistan Muslim Tells the Truth About Elijah Muhammad," *Muhammad Speaks*, October 15, 1962, p. 3.

74. Anwar Ali Khan, "Letter to Editor Resents Slur on Muslims," "Moslem League Denounces Prison Officials," *Mr. Muhammad Speaks*, Special Edition, p. 4.

75. Eugene XXX, "Christian Justice," *Muhammad Speaks*, October-November 1961, p. 12.

76. Curtis, *Black Muslim Religion*, 97, 109, 110.

77. Ibid., 118; Eugene XXX, "The 'Goodwill' Industry," *Muhammad Speaks*, April 1962, p. 35; Cartoon by Eugene XXX, *Muhammad Speaks*, August 16, 1963, p. 8.

78. Cartoon by Eugene XXX, *Muhammad Speaks*, October-November 1961, p. 15; Eugene XXX, "A Nightmare in the White House," *Muhammad Speaks*, December 1961, p. 1.

79. Eugene XXX, "Lazz," *Muhammad Speaks*, September 15, 1962, p. 23.

80. Eugene XXX, "The Biggest Burden," *Muhammad Speaks*, April 1962, p. 6. See also, Eugene XXX, "Let's Pretend . . . ," *Muhammad Speaks*, April 1962, p. 17.

81. Eugene XXX, "Lincoln 'The Hustler,'" *Muhammad Speaks*, April 1962, p. 32.

82. See Sostre v. McGinnis 334 F.2d 913 (2d Cir. 1964).

83. Eugene XXX, "First Step to a Police State . . . ," *Muhammad Speaks*, December 6, 1963, p. 12.

84. "Rochester Negroes Unite For Freedom: Hit Muslims' Persecution, Protest Police Brutality," *Muhammad Speaks*, March 18, 1963, p. 11.
85. Ibid.
86. Elijah Muhammad, "What is Un-American?" *Muhammad Speaks*, December 1961, p. 1.
87. Ibid., 4, 27.
88. "World Muslim Publication Praises American Muslims," *Muhammad Speaks*, October 15, 1962, p. 3
89. Joseph Walker, "How a New York Senator Sees Muslims, Rockefeller, Shelters," *Muhammad Speaks*, April 29, 1963, p 14.
90. Ibid.
91. "Nix Seeks End of Police Brutality Against Negroes: Congressman Shocked by Cop Rampages," *Muhammad Speaks*, December 30, 1962, p. 5.
92. "Text of Congressman Nix's Statement on Mr. Muhammad," *Muhammad Speaks*, December 30, 1962, p. 4; "Congressman Approves," *Muhammad Speaks*, December 1961, p. 9.
93. Evanzz, *The Messenger*, 222.
94. Clegg, *An Original Man*, 252.
95. Memo—"Nation of Islam," SAC Chicago, October 7, 1966, part 11, sec. 2, p. 3–4 (E. Muhammad file).
96. "The Oppressed Need the 'Bomb' Says Sukarno," *Muhammad Speaks*, August 6, 1965, p. 2.
97. John Woodford, "Messaging the Blackman," *Serials Review* 16, (Summer 1990): 86.
98. Ibid., 86–87.
99. Ibid., 90.
100. Ibid.; Robin D.G. Kelley and Earl Lewis, eds., *To Make Our World Anew: A History of African Americans* (New York: Oxford University Press, Inc., 2000), 520–521.
101. Woodford, "Messaging the Blackman," 89–90.
102. *Bilalian News*, October 26, 1979, 18. While there appears to be no direct link between the *Daily World's* phone calls and the FBI, it is interesting to note that the calls were directed at the Muslim staff at Muhammad Speaks and not the largely non-Muslim editors and writers.
103. Ibid.; Woodford, *"Messaging the Blackman,"* 90. According to Woodford, *Muhammad Speaks* subscribed to the Liberation News Service (LNS) as a source on international affairs.
104. Woodford, *"Messaging the Blackman,"* 94–95.
105. "Newspapers Circulation Up; Muhammad Speaks Leads," July 15, 1962, *Muhammad Speaks*, p. 10.
106. Ibid.
107. "Muhammad Speaks," January 1962, *Muhammad Speaks*, p. 1.
108. "Subscription Drive Picks Up Momentum," July 15, 1962, *Muhammad Speaks*, p. 10.
109. "For Justice and Unity," July 1, 1962, *Muhammad Speaks*, p. 16.
110. Eugene Majied, "Tell Us Anything," July 1, 1962, *Muhammad Speaks*, p. 16.
111. "'Guilty Police' Must Pay, Says NAACP," June 1962, *Muhammad Speaks*, p. 5. Also, see "CORE President Condemns L.A. Shooting of Muslims," August 31, 1962, *Muhammad Speaks*, p. 18.
112. Gordon Grant, "Lawyers Clash Verbally In Police, Muslim Debate," August 4, 1962, *Los Angeles Times*, p. D8; "NAACP Lawyers Make Plea for Strong Police Review Board," May 17, 1962, *Los Angeles Sentinel*, p. C5, col. 1.
113. "Fire, Police Group Protest Miller on Rights Committee," August 16, 1962, *Los Angeles Sentinel*, p. B8, col. 1; "Helpless Citizens Pay in Blood," July 15, 1962, *Muhammad Speaks*, p. 2.
114. "ACLU Comes to Aid of Muslims Fired From Jobs With Government," July 23, 1963, *Philadelphia Tribune*, p. 2, col. 1; "Civil Liberties Unit to Aid Fired Muslims," July 27, 1963, *Cleveland Call and Post*, p. 1C, col. 1.
115. Eugene Majied, "Justice, or Else!" October 15, 1962, *Muhammad Speaks*, p. 8.
116. "Robert Kennedy at NNPA Parley," July 15, 1962, *Muhammad Speaks*, p. 2.
117. Malcolm X, *The Autobiography of Malcolm X*, 319; DeCaro, *On the Side of My People*, 181.
118. Sean McCloud, *Making the American Religious Fringe*, 81.

119. Ibid., 82.

120. Malcolm X to Frank Hogan, January 2, 1963, *Malcolm X Collection*, SCRBC, Box #11, Folder #18; Malcolm X to Mayor Wagner, January 2, 1963, *Malcolm X Collection*, SCRBC, Box #11, Folder #18; Malcolm X to the Honorable John F. Kennedy, February 16, 1963, *Malcolm X Collection*, SCRBC, Box #11, Folder #18; Malcolm X to Robert F. Kennedy; February 16, 1963, *Malcolm X Collection*, SCRBC, Box #11, Folder #18.

121. As late as May 1968, F.B.I. Director J. Edgar Hoover claimed at a congressional hearing on Black Nationalism that the NOI continued to represent a national security threat. See Elijah Muhammad, "Mr. J. Edgar Hoover's Charge," May 31, 1968, *Muhammad Speaks*, p. 3.

Chapter Seven

Clear Victories and Missed Opportunities

For a number of reasons, including its own structural initiatives such as *Muhammad Speaks*, the NOI's social legitimacy as both a political and economic force in African American communities solidified in the period from 1965 until the death of Elijah Muhammad a decade later. Amidst the rise of a new generation of African American political activists struggling to define and distinguish itself from conventional civil rights protest movements, Malcolm X's life and public service came to symbolize a core set of ideas around which a "cultural" and "revolutionary" tradition of black nationalist thought and practice, collectively referred to as the Black Power movement, emerged.[1] Moreover, the substance of his ideas—largely centered on issues such as African American self-pride and the self-defense, self-determination and the economic self reliance of African American communities—provided a strong basis for African American political organization in the immediate aftermath of the race-based riots that took hold of the Watts neighborhood of Los Angeles, California, in mid-August 1965. Indeed, as historian Gerald Horne points out, " . . . it is hard to dispute the perception that Watts marked the point when masses of blacks were manifestly demonstrating that Dr. King's ideas were not accepted universally."[2] Ironically, therefore, it appears that the NOI became the net beneficiary of ideas largely popularized by Malcolm X even after his assassination at the hands of NOI members.

Indeed, circumstantial evidence suggests that the NOI saw an overall increase in its membership following the assassination of Malcolm X in February 1965.[3] Ula Taylor contends that student activists who either outgrew or became disillusioned with traditional integrationist oriented organizations—but nevertheless wanted to realize the advancement of African American communities in more tangible ways—buoyed membership num-

bers of the post-1965 NOI.[4] For such individuals, the NOI's program of cooperative economics provided a very visible and practical means of accomplishing that goal.[5] Consequently, in the years following Malcolm X's death and the riots in Watts, attempts by government agencies to isolate and depict the NOI as a fringe, subversive, Un-American organization with violent tendencies were largely ineffective in African American communities.[6]

Not only were student activists moving toward the NOI after 1965, moreover, but the NOI sought to expand its relationships—at least symbolically—during the period. For example, in July 1967, NOI members were present and participated in the National Black Power Conference in Newark, New Jersey.[7] Similarly, *Muhammad Speaks* began briefly running essays, articles and other politically charged literary works by scholar-activists such as Amiri Baraka, a key figure in Newark's Black Nationalist community, within its pages as early as August 1965.[8] As stated previously, the NOI's newfound social approval was not so much the product of the NOI's public relations initiatives as it was the result of political and social developments occurring across and within African American communities.

Yet, despite the improved status, it seems the NOI failed to use its evolving relationships and social legitimacy in a way that could bring national attention to the abuse of its members' civil rights and liberties at the hand of federal, state and local authorities. This was not coincidence, but the result of long practiced traditions. Elijah Muhammad had consistently advocated a cautious, non-activist and conservative approach to politics, publicly and personally eschewing association with Black Nationalist figures and movements.[9] Briefly recall that the NOI had sought to emphasize its economic program over and above political concerns since the late 1950s as a matter of policy. The emergence of Malcolm X as the NOI's national spokesperson, and his concomitant efforts to bring attention to the religious persecution of NOI members, only subverted this policy initiative temporarily. Put another way, with the departure of Malcolm X in early 1964 and his death one year later, a concern for advancing the NOI's increasing membership and avoiding the type of social and political media agitation that could potentially result in asymmetrical responses from law enforcement agencies (e.g., police raids) characterized the NOI's public relations initiatives. While the NOI moved away from using its public relations initiatives as a means of defending the civil rights and liberties of its members, the same could not be said about the network of legal counsel the NOI had been establishing since 1957.

Although Malcolm X's assassination in 1965 triggered a shift in the NOI's social acceptance among African Americans, it had relatively little impact on the legal initiatives that the NOI had implemented over the course of the past seven to eight years. Largely as a result of Malcolm X's organization and institution building skills and Edward W. Jacko's professional networks, the NOI either retained or had access to a group of reliable and

professionally competent legal counsel who were willing to defend the civil rights and liberties of NOI members by the mid 1960s. So, for example, when Malcolm X travelled to Los Angeles and established NOI Mosque No. 27 in 1957, he also made it a point to contact and retain the services of Louis B. Berry, a civil rights attorney and acquaintance of both Jacko and Jawn Sandifer. Like Jacko and Sandifer, Berry had graduated from law school at Howard University and studied under former Howard University Professor of Law William Robert Ming, Jr.[10]

In fact, although Jacko had taken Charles H. Houston's course on civil liberties, it was his relationship with his other former professor, William Ming, which proved tactically beneficial to the NOI. Elijah Muhammad had employed Ming to defend his son Wallace, who had been convicted for violating the Selective Service Act of 1948.[11] Although Wallace D. Muhammad was apparently successful in having his local draft board designate him as a conscientious objector, the status still required him to serve in either a non-combatant role or as a civilian in a workplace of national importance. The possibility that he would support the draft or America's Armed Forces in any capacity apparently did not sit well with his father, however, and he never showed up to the civilian job—at Elgin State Hospital in Philadelphia, Pennsylvania—to which he was assigned. On January 29, 1959, a grand jury indicted him for failing to report to the hospital. Unfortunately for Muhammad, George N. Leighton, his attorney prior to Ming, was either unaware or willfully ignored the fact that the Supreme Court had ruled against someone in a case almost identical to his client's some 15 years earlier.[12] Although Ming would ultimately attempt to keep Wallace Muhammad from going to jail by forcing the issue on appeal, the Supreme Court ultimately denied his request for certiorari and Muhammad surrendered to authorities on October 30, 1961.[13] It was a critical learning experience that would influence decisions made by other NOI members several years later.[14]

One of the most fortuitous partnerships growing out of Jacko's relationship with Ming was his introduction to Chauncey Eskridge, a young attorney at Ming's Chicago-area law firm McCoy, Ming, and Leighton. Due to his extensive knowledge of tax law, Eskridge had served as part of a six member legal team that defended Dr. Martin L. King, Jr. against tax evasion charges in May 1960.[15] In their work with the NOI, Eskridge and Ming became instrumental in helping to prepare and file Elijah Muhammad's personal and the NOI's organizational tax records. The quality of their work can be measured by the fact that the NOI never went to court over its taxes during Muhammad's entire leadership over the group.[16] By 1965, Jacko had already become the NOI's chief legal counsel and—given his responsibility for coordinating much of the group's legal efforts in court—it was inevitable that he would utilize Eskridge's talent and resources to help him resolve other legal problems facing the Nation.[17] In June, U.S. District Court Judge Richard B.

Austin handed the two attorneys one of their first collaborative legal victories when he ruled in favor of their client that the NOI's beliefs "constitute a religion."[18] The case began in 1962 when Thomas Cooper, an incarcerated NOI member at the Illinois State Penitentiary in Joliet, filed a complaint alleging that the warden of that institution had violated his First and Fourteenth Amendment rights.[19] Among other things, the case was proof that the legal relationships that Jacko and Malcolm X had developed for the NOI since 1957 were still in place after Malcolm X's defection from the group and eventual assassination. These legal relationships and previous court battles would become increasingly important when a relatively unknown member of the NOI gained a foothold in the national press the previous year.

To the casual observer, Muhammad Ali's courtship with the NOI began in the weeks and days leading up to his fight with Sonny C. Liston for the boxing heavyweight championship of the world on February 25, 1964.[20] Although he had been a member of the NOI since 1961, media speculation about his religious affiliations had arisen due to recent public appearances by Malcolm X at his training camp in Miami, Florida.[21] In fact, Ali had studied the NOI's teachings and beliefs while still a teenager in his native Louisville, Kentucky.[22] Born in 1942 to Cassius and Odessa Clay, Cassius Marcellus Clay, Jr., always had a keen awareness of the racial and class related restrictions to his social advancement.[23] His reluctance to divulge his ongoing interest and eventual membership in the NOI until his fight with Sonny Liston in no way reflected hesitance on his part, therefore, but the rather prudent decision by officials within the NOI to publicly distance themselves from a fighter whom they and most professional boxing analysts had given a slim chance of success.[24] Additionally, Elijah Muhammad was on the record for saying that sport caused "delinquency, murder, theft and other forms of wicked and immoral crimes," in African American communities.[25] Like its tenuous association with Black Nationalist groups, however, the NOI's decision to publicly embrace Clay following his stunning defeat of Sonny Liston seems to have been based largely on self-interest and subject to being severed at any time.[26]

Soon after he won the World Boxing Association's world heavyweight title, the NOI moved to quickly identify with the famous boxer and put itself in position to receive any tangible benefits—such as increased membership numbers—that might result. Less than a week after his victory over Liston, Edward Jacko held a press release to announce that he would be handling Clay's legal affairs.[27] Elijah Muhammad also bestowed one of the highest honors onto the young pugilist that an NOI member could receive by giving Cassius Clay his "Original name," Muhammad Ali, shortly thereafter.[28] The NOI's longtime leader complimented these trappings by eventually making his son Herbert, head of the NOI's public relations department, Ali's professional manager in 1965. The move was no mere coincidence. To the extent

that Ali's heroics within the ring and association with the NOI continued to increase newspaper sales and recruit new members, the NOI promoted Ali as its most public persona next to Elijah Muhammad. Soon, Muhammad Ali would have his own feature column in *Muhammad Speaks* called "News from the Camp of the Champ."

At the same time, the NOI was careful to avoid placing Ali in a position to criticize the actions of law enforcement agencies or state and federal officials who challenged the civil rights and liberties of NOI members. For example, when the Los Angeles Police Department raided the NOI's Mosque No. 27 and arrested fifty-nine NOI members on assault charges during the height of the Watts Uprising on August 18, 1965, Muhammad Ali, Herbert Muhammad and Edward Jacko were in Europe on a month-long exhibition tour.[29] While Ali had made his travel arrangements prior to the police raid and had no way of knowing that it would take place, he certainly had the type of public presence that would bring attention to the incident given his recent defense of his heavyweight title in a rematch against Sonny Liston.[30] Nevertheless, it was Jacko who Elijah Muhammad requested go to Los Angeles and speak with law enforcement officials and the local press.[31]

For his part, Ali appeared to bask in the glow of his hard won fame and international celebrity. Before his departure to Europe, Ali had recently returned from a successful two-day visit with NOI Minister Charles X Eagan at the NOI's mosque in Honduras, and would soon visit Puerto Rico, Sweden, and Finland.[32] He had also taken it upon himself to get married—and divorced—in the short space between his two fights with Liston. With Edward Jacko being kept busy making court appearances and filing paperwork in Ali's divorce proceedings, Ali devoted much of his time to spreading the teachings of Elijah Muhammad and the NOI.[33]

At the same time, Ali's frequent travel and public appearances provided the NOI with unique opportunities to raise public awareness on civil rights and liberties issues confronting its members. This potentially fruitful prospect, however, never seems to have materialized. For example, although he occasionally spoke at prisons about the influence of Elijah Muhammad's teachings on his life, it seems he never raised public awareness about the numerous legal petitions being submitted by incarcerated NOI members who sought court assistance in their struggles to secure religious freedoms.[34] In another case, Ali's attendance at a banquet recognizing the twentieth anniversary of *Ebony* magazine during the closing weeks of 1965—an event where he shared the dais and numerous photo-ops with U.S. Solicitor General Thurgood Marshall—represents one of the most truly ironic and missed opportunities in the NOI's struggle to advance and defend the civil rights and liberties of its members. Herbert Muhammad, who attended the event and managed Ali, appears to have exploited the potentially significant moment as another in a long line of celebrity photos taken with Ali that evening.[35]

For both Ali and the NOI, the following year opened up with several major, if not unfamiliar, challenges. In January, police officers in Newark, New Jersey raided the local NOI Mosque No. 25. The raid resulted in the destruction and otherwise damage of thousands of dollars worth of property. Jacko, who had just "cleared 59 Muslims from charges connected with the Watt's rioting," was successful in negotiating a settlement with the city over the property damage at the mosque.[36] Meanwhile, at least two pressing legal matters required the attention of Ali and his legal staff. While Edward Jacko was busy putting out fires between NOI members and local authorities in Newark, Chauncey Eskridge was appearing before a trial court in Chicago to represent Ali after the boxer had been arrested for disorderly conduct.[37] The charges were just the least of Ali's worries, however. In February, the selective service system reclassified Muhammad Ali's draft status to 1-A, making Ali a prime candidate for induction into the Armed Forces.[38] The news caught Muhammad Ali by surprise. After failing the math portion of his selective service examination, Ali's local draft board classified him 1-Y and claimed that he was mentally unfit to serve in the Armed Forces.[39] Being ordered to report for induction into the military, however, had been a too familiar scene in most NOI mosques.

Since WWII, NOI members including Elijah Muhammad, Elijah Muhammad, Jr., and Raymond Sharrief, Supreme Captain of the NOI's Fruit of Islam, had served time in prison for refusing the military draft.[40] Of course, Wallace D. Muhammad, Elijah Muhammad's seventh son, was one of the latest NOI members to serve time in this regard—but, he was not the last. From November 1961 to July 1963, Bernard X, minister to the NOI mosque in San Francisco, served a prison sentence after being convicted on charges of draft evasion. According to an FBI report examining NOI compliance with federal laws, another unnamed NOI member had been sentenced to prison in 1963 after failing to find "employment of national importance," as a condition of his probation.[41] Moreover, FBI surveillance of NOI mosques routinely found ministers in the religious community reminding members of the sacrifice that Elijah Muhammad had made in placing his allegiance to Islam and understanding of fighting in wars above the military interests of the country.[42] Undoubtedly, these recent events and the NOI's religious tradition with respect to military service influenced Ali's thinking about the circumstance which had befallen him.

Yet, Ali's decision regarding the draft was his to make, and his alone. As it had done with Wallace Muhammad and so many others, the NOI continued to see the draft of its members through the selective service system as the personal civil liberties concern of individual members. As suggested earlier, going to prison for one's beliefs also had a certain religious significance not dissimilar to martyrdom in the NOI as well. Unsurprisingly, no major demonstrations, special editions of *Muhammad Speaks*, or lengthy denunciations

from Elijah Muhammad about the continued drafting and imprisonment of NOI members followed the announcement concerning Ali's draft status. This is not to say that the NOI failed to provide a visible show of public support for the civil liberties of Muhammad Ali. On the contrary, *Muhammad Speaks* published numerous letters and articles from major civil rights figures supporting Ali's stance on the draft.[43] In fact, in the weeks leading up to Ali's appearance at the selective services induction center in Houston, the word "Justice," consistently appeared on the front pages of the *Muhammad Speaks*.[44]

Nevertheless, neither NOI officials or *Muhammad Speaks* appear to have defined Ali's draft resistance as a civil liberties issue effecting numerous men within the NOI over an extended period of time.[45] When asked where the NOI stood with respect to Ali's new draft status, a spokesman for the group replied " . . . we will not make any statement. You will have to speak to Muhammad Ali. We will not say whether any of our members have sought to become conscientious objectors."[46] If any public opinion was brought to weigh on Ali's case, it was brought as a consequence of his status as an icon of American sports. Despite the NOI's decision against launching a sustained public relations effort around the inability of any of its members to attain conscientious objector status (and as a means of increasing its social legitimacy as a religious institution), the legal apparatus that the NOI had surrounded Ali with quietly went to work preparing to defend their client.

The most immediate problem that Ali's reclassification posed for the NOI was the potential cancellation of his fight against Ernie Terrell on March 29, in Chicago, Illinois, due to concerns that he might be quickly inducted into the military. Ali wrote a letter to his local draft board in Kentucky, claiming that as a conscientious objector to war, he deserved to be waived or exempted from military service. The board acknowledged his request by sending him a formal application form for conscientious objector status on February 18, 1966.[47] Similarly, Jacko informed the fight's promoters that the appeal would guarantee that the fight would go on as scheduled, telling local reporters that "the air now is cleared, apparently, as far as the Chicago fight is concerned."[48] Although Ali and Jacko's efforts allayed many of the initial fears that the fight would be cancelled once Ali began the process of appealing his draft status, the status of the fight was again thrown into turmoil when in response to a telephone interview by *Chicago Daily Times* reporters regarding his plans on serving in the military, Ali replied "I ain't got nothing against them Viet Cong."[49] Unfortunately for both Ali and Jacko, things would get much worse before they would become better.

In response to Ali's statement, the Illinois State Athletic Commission threatened to rescind its approval of the fight unless Ali publicly apologized for remarks the commission deemed unpatriotic. The commission scheduled a public hearing on the matter that could have served as an opportunity for

Ali and Jacko to articulate longstanding problems facing NOI members as a matter of public record, but instead revealed the degree to which Ali and Jacko were at odds due to their respective interests. As the commission waited expectantly for Ali to apologize for his previous remarks, Jacko, wanting Ali to quickly settle the matter and repair whatever damage had been done to Ali's financial interests and public influence, insisted Ali go ahead and apologize without delay.[50] For Ali, a figure who had been accustomed to openly speaking his mind, such attempts to negotiate his speech were unacceptable. In a very public show of rebuke, Ali turned to his legal counsel and exclaimed "I don't have to apologize. I am not in court."[51] The commission ultimately rescinded its approval of the bout and, although Ali and Jacko would continue to work together on boxing related issues such as contracts, the experience had left its mark. By July 1966, Ali would hire Hayden Covington, a highly reputable lawyer with a well-established background in defending conscientious objectors, to handle his legal case against the Selective Service System.

Notwithstanding Ali's public rebuke of Jacko over issuing an apology to the Illinois State Athletic Commission, between late February and July 1966, Jacko provided a very solid and competent legal defense of Ali's civil liberties. In February, Jacko filed paperwork with Ali's local draft board requesting that his client be granted conscientious objector status. After being denied conscientious objector status by his local draft board the state appeals board turned Ali's case over to the Justice Department for review. The Justice Department, in turn, appointed a special "hearing officer" to determine the extent of Ali's religious sincerity. In addition to submitting signed affidavits from persons familiar with Ali's religious beliefs, Jacko provided former Kentucky State Circuit Court Judge Lawrence Grauman with a copy of Elijah Muhammad's *Message to the Blackman* and back issues of *Muhammad Speaks*.[52] By this time, he had acquired five years of experience defending the religious beliefs of NOI members in state, district, and circuit courts. The FBI provided Judge Grauman with a separate report containing interviews of relatives, friends, and acquaintances who had observed Ali's commitment to his religious principles over the last two years. In a major boost to Ali's case, Grauman concluded that Ali was "sincere in his objection on religious grounds to participation in war in any form," and recommended that Ali's conscientious objector status be approved.[53] Jacko, it appeared, had won a huge victory for the NOI.

It must have come as somewhat of a surprise, therefore, when the Justice Department's principal attorney reviewing Ali's case, T. Oscar Smith, dismissed the findings of the agency's own investigation and arbitrarily concluded that the Ali did not meet the requirements for conscientious objector status. According to Smith, the NOI teachings were primarily political and racial, thereby implying that Ali did not meet the requirement that his views

be based on religious training and belief.[54] He also suggested that Ali was not sincere in his beliefs, ignoring the fact that the boxer had divorced a wife and been denied multiple boxing opportunities based on his religious beliefs. Moreover, although Thurgood Marshall did not deliver the denial of Ali's request himself, his position as solicitor general placed him in the unique position of being able to review and make recommendations upon the department's decision in Ali's case. In any event, Jacko would not get the benefit of contesting the decision in federal court because Ali had already hired another lawyer as the Justice Department was reviewing the appeal.

Despite not being in the employ of the NOI, Hayden Covington was one of the most experienced lawyers on issues of religious freedom that Ali could have found to defend his civil rights and liberties. Covington had argued major cases covering the first amendment and military draft since World War II, when he defended the interests of Jehovah Witnesses against being required to participate in the war.[55] One of his first orders of business was to completely shift Jacko's legal strategy for defending Ali in three ways. First, while the NOI had previously pursued attaining conscientious objector status as the solution to being required to serve in the military, Covington went one step further and requested that Muhammad Ali be exempted from military service on the basis of his status as an itinerant minister in the NOI.[56] In addition to having publicly stated his desire to become a minister since his initial fight with Sonny Liston, Covington provided Ali's local draft board with material evidence showing his client's status. In late August, he submitted ninety-two petitions with 3,810 signatures of NOI members who recognized Ali as a minister in the religious community.[57] The difference in approach was both unique and profound: whereas conscientious objectors were still required to find employment at a facility of national importance, and, hence, indirectly support the war as a noncombatant, a ministerial exemption completely released a potential inductee from any obligation to support the national war effort. Moreover, the request for a change in status gave Ali's appeal process a fresh start.

Second, and closely related to his first line of argument, Covington challenged the authority of local draft boards to determine the ministerial status of petitioners as a violation of the first amendment's clause prohibiting government from establishing a religion.[58] In some respects, the move was nearly identical to the legal arguments made by Edward Jacko and Jawn Sandifer in 1961. Prior to 1967, courts had given draft boards extensive leeway in determining the draft status of selective service registrants. Similar to the treatment of state penal institutions before *Pierce v. LaValle*, courts had long recognized the decision making authority of draft boards as an exclusive sphere of power reserved for the executive branch with which they would not normally interfere. When Ali's draft board denied his request for a ministerial exemption, therefore, Covington was careful to identify the con-

stitutional basis upon which his legal challenge rested as an altogether distinct legal issue than a judicial review of the decision itself.[59]

Third, Covington challenged the selective service system as inherently discriminatory and unjust based on the racial makeup and near exclusion of African Americans from local draft boards. The timing of Covington's challenge was unique in that it coincided with broad civil unease in American society over the apparent class and racial disparities in how the system selected inductees and awarded deferments. The social clamor for a more equitable selective service system was so loud, in fact, that President Lyndon B. Johnson appointed a special commission to assess the system's fairness in July 1966, which produced a report entitled, "In Pursuit of Equity: Who Serves When Not All Serve?" Ironically, John H. Johnson, the founder of *Ebony* magazine who had honored both Thurgood Marshall and Muhammad Ali at the magazine's twentieth anniversary celebration in late 1965, served on the commission.[60] Although the commission found widespread racial disparities existed in both the makeup of local draft boards and selection of candidates actually drafted for military service, it concluded that this disparity was not systemic but resulted from the lack of uniform federal draft policies and preexisting "social and economic injustices" in American society.[61] Had the commission concluded that the disparity found within the selective service system was systemic in nature, it would have significantly enhanced Ali's legal challenge of his draft status.

Nevertheless, in many respects, the NOI's failure to capitalize on the public sentiment that underlay the commission's report represented another missed opportunity to broaden the group's social legitimacy as a religious institution outside of African American communities. In public interviews he gave in the weeks prior to Ali's conviction on draft evasion charges in June 1967, Elijah Muhammad continued to view the matter as an issue of racial injustice aimed at NOI members, despite widespread public displeasure with the draft system that crossed racial boundaries.[62] Although *Muhammad Speaks* continued to cover Ali's draft struggle with news of his broad based support, the NOI's failure to build public sentiment around the collective struggle of its members opposition to being drafted over the previous two decades effectively limited the NOI's ability to pressure President Johnson or his commission into responding to the group's concerns.[63] Predictably, while the commission examined racial and class based disparities in the draft system, it altogether ignored disparities based on religious affiliation.

As a legal strategy, Covington's last idea was ingenious not only for its attempt at taking advantage of national disillusionment with the draft, but also for its novel use of potentially advantageous legal precedent that compared the exclusion of African Americans on draft boards to the historic exclusion of African Americans in juries. In fact, it was Charles H. Houston who pioneered challenging the systemic exclusion of African Americans

from jury lists as a prima facie violation of constitutional guarantees to due process and equal protection under the law. In February 1938, Houston presented oral arguments before the US Supreme Court challenging the practice of excluding African Americans from juries in McCracken County, Kentucky. In what became known as *Hale v. Kentucky* (1938), the Court ruled that "a systematic and arbitrary exclusion of Negroes from the jury lists solely because of their race or color," constituted a violation of the 5th and 14th Amendment.[64] It was a landmark verdict, utilizing a line of thought that Houston had developed throughout his career.[65]

Notwithstanding the obvious differences between a local draft board and a civilian jury in a criminal or civil proceeding, at least two distinct parallels existed between Ali's case and the *Hale* trial. First, Thurgood Marshall had worked alongside Houston in developing the legal brief for the *Hale* case and had been instrumental in doing the early legwork to make sure lower courts implemented the ruling.[66] The fact that Ali's lawyers were now using Marshall's past work as legal precedent to fight the Justice Department's defense of the Selective Service System would not have gone unnoticed by the Solicitor General. Second, Covington took issue with the Selective Service System and the actions of Ali's local draft boards in Kentucky and Texas, the same states where Marshall and Houston laid the foundation for challenging the systemic exclusion of African Americans from jury lists. In effect, Covington argued that the same social forces that had contributed to the existence of all white juries in Kentucky before 1938 were at work in the selection of Muhammad Ali's draft board afterwards.[67] Covington could of course point to the President Johnson's National Advisory Commission on Selective Service, which found that less than two percent of the personnel making up local draft boards were African American in late 1966.[68]

Ultimately, none of Covington's legal approaches were successful in exempting Ali from military service. On June 20, 1967, approximately two months after he refused induction into the US Armed Forces, the federal district court in Houston, Texas, sentenced Ali to five years in prison and gave him a $10,000 fine. Although Ali would remain out of prison due to various appeals, his decision to stand up for his religious beliefs had taken a considerable toll on his financial income. In addition to paying alimony and child support payments to his ex-wife, diminishing income and venues for boxing matches left Ali unable to pay the substantial legal fees he had accumulated over time. On October 21, 1967, an article appearing on the front page of the *Cleveland Call and Post* reported that Covington had sued Ali for $209,615.10 in legal fees.[69] Appearing at a news conference on the subject in November, Covington claimed his decision to sue Ali was not personal and predicted Ali would eventually win his legal battle with the draft, stating that the boxer continued to have his "good wishes and hope for success on the appeal . . . "[70] Chauncey Eskridge, who had represented Ali in other legal

cases, called Covington's fees "ridiculous," and claimed he would defend Ali for $2,500.[71] In the end, Eskridge and Charles W. Morgan, regional director of the American Civil Liberties Union, headed a five person legal team that would take Ali's case all the way to the Supreme Court.[72]

For its part, the NOI at times appeared ambivalent in its support of Ali's draft case. Nothing was perhaps more indicative of this posture than a decision made by Herbert Muhammad, Ali's manager, to schedule a rematch between Ali and Floyd Patterson in Las Vegas, three days before Ali was to report for induction ceremonies in Houston, Texas. An article appearing in the April 14, 1967, issue of *Muhammad Speaks* and appropriate subtitled "Draft or No Draft, Champ Leaves Unmatched Record," explained the thinking of Ali's management thusly: "By promptly scheduling another world heavyweight fight, the camp of the champ served notice upon the sports world that the primary business of a fighter is to fight, that the promise made by Muhammad Ali when his new management began . . . would be kept despite any outside pressures."[73] Of course, two weeks later, on April 28, 1967, Ali would make history by refusing his induction order at the induction center in downtown Houston, Texas. Conversely, appearing in the same issue and on the same page as the article about Ali's upcoming fight with Patterson was a story about the Reverend Gerald E. Forshey, a white Methodist minister in Houston who had written the city's selective service office claiming that Ali was entitled to the same exemption he received as a minister of religion.[74] In fact, an article appearing in the March 3, 1967, issue of *Muhammad Speaks* announced Muhammad Ali's appointment as minister of the NOI's mosque in Houston.[75] Ali was filling in for the regularly assigned minister who had taken a temporary leave of absence. This ambivalence came to a decisive end when Elijah Muhammad suspended Ali from the NOI after the boxer suggested that he would return to boxing for the right price during an interview with the sportswriter Howard Cosell in early 1969.[76] Understandably, Elijah Muhammad construed the comment as suggesting that material and not spiritual concerns were at the center of Ali's life.[77]

Still, Elijah Muhammad's decision to suspend Ali seemed both politically and economically expedient at the time. As Claude Clegg notes, Ali's diminishing income and draft controversy "had become a liability for the Nation, which was already feeling the sting of enhanced counterintelligence operations launched by the FBI in 1967."[78] In the final analysis, however, the NOI's refusal to excuse the verbal misstep and remain consistent in its defense of Ali's civil liberties would prove to be perhaps the biggest missed opportunity to solidify the group's social legitimacy as a religious institution that the NOI made during the period.

In early January 1971, after five years of lengthy, drawn-out legal battles, the US Supreme Court granted Ali certiorari following a decision by the US Court of Appeals for the Fifth Circuit to affirm a lower court's ruling that Ali

had willfully refused his induction order into the US Armed Forces.[79] The major issue before the Court involved the validity of the government's refusal to classify Muhammad Ali as a conscientious objector, and the circumstances under which NOI members justified participation in war. Unfortunately, during oral arguments, Chauncey Eskridge failed to effectively and definitively explain the NOI's concept of "holy war," or religious struggle in the way of Islam. The poor performance by Eskridge was enough for the Court to initially vote 5-3 in favor of upholding Ali's conviction. It was only after Justice John Harlan, following up on the suggestion of one of his law clerks, read copies of Elijah Muhammad's *Message to the Blackman* and Alex Haley's *The Autobiography of Malcolm X* that Ali's chances of success and the entire case would turn in Ali's favor.[80] On June 28, 1971, in an 8-0 decision, the Court overturned Ali's conviction on a legal technicality. In its opinion, the Court wrote that the Department of Justice had erred in advising Ali's draft board to deny his claim for conscientious objector status by not stating the grounds upon which the claim had been denied.[81]

Although Ali was personally victorious, the case did little to advance the NOI's struggle to defend and secure the civil liberties and rights of its members. Among other things, the Court's ruling established no legal precedent recognizing the NOI as a religious community. Apparently, several members on the Court feared that doing so might dramatically increase African American enrollment into the NOI as a means of avoiding the draft. Real or imagined, it appears the case had little if any impact on other NOI members facing imprisonment on draft evasion charges. As it had done in *Clay v. United States*, in *Joseph v. United States* (1972), the Court overturned a ruling that would have sent Lionel A. Joseph, an NOI member since 1965, to prison on draft evasion charges due to a legal technicality and not the religious nature of the NOI.[82] Thus, despite the litany of circuit and district court rulings that found the NOI and its teachings to be religious, the highest court in the country had repeatedly failed to weigh in on the matter.

Ultimately, while it is difficult to assess the overall influence that public pressure might have had on any of the aforementioned legal outcomes, the NOI was partially responsible for neutralizing its structural capacity to defend and advance its social legitimacy as a religious institution during the period. Although it tended at times to only discuss his boxing career, much of Muhammad Ali's coverage in *Muhammad Speaks* stridently supported the fighter's resistance to the draft.[83] However, no articles about Muhammad Ali appeared in *Muhammad Speaks* until February 4, 1972, three years following his one year suspension from the NOI in 1969.[84]

More than anything else, Ali's falling out with the NOI punctuated the religious community's inability to translate broad public affinity for one of its members into widespread recognition and sympathy toward its collective struggles to defend and secure civil liberties for its members. Put another

way, the NOI's failure to define draft resistance as a major and ongoing civil liberties issue faced by its entire membership proved to be a tactical error. In the absence of the NOI defining Muhammad Ali's public stance within its own tradition of draft resistance, Ali became a symbol for humanitarian and civil rights issues and groups irrespective of the fact that he consistently maintained his principled stance on draft induction based on his religious beliefs. To cite one example, on October 26, 1970, Ali received the Martin Luther King Memorial Award from Coretta Scott King for being "a champion of justice and peace."[85] Although its quest for social legitimacy as a religious institution waned by 1971, four years after *Clay v. United States*, Elijah Muhammad's seventh son, Wallace D. Muhammad, would attempt to change that scenario by moving the NOI into a more globally accepted version of Islam.

Notwithstanding the issues cited above, a non-accidental relationship exists between the initiatives that the NOI developed in its struggle to defend the civil rights and liberties of its members and Muhammad Ali's subsequent legal victory before the US Supreme Court in 1971. This non-accidental relationship exists on at least three grounds. First, by the time Ali came to the attention of the NOI, the group had built a legal architecture and network of support that ultimately insured Ali had effective and competent legal counsel at trial. Second, through the legal efforts of the lawyers it had retained and court victories of incarcerated NOI members, the NOI had developed the legal precedent that Ali used to present a formidable defense of his civil liberties in court. Third, the decision by Justice Thurgood Marshall to recues himself from Ali's case can be attributed to various facts, including his status as US Solicitor General during a key phase of Ali's legal appeals and disparaging remarks Marshall made about the NOI that the group recorded in its newspaper, *Muhammad Speaks*.

Thus, on at least one level, it can be said that the NOI significantly advanced its cause to defend and secure the civil liberties of its members after three decades of struggle. As chief legal counsel for the NOI, Edward Jacko and his assistants continued to orchestrate a comprehensive legal defense of NOI members and interests across the nation. Thus, despite Elijah Muhammad's reluctance to bring public attention to the NOI's legal battles, his decision to provide ordinary NOI members in cities such as Atlanta, Omaha, Indianapolis, San Francisco and elsewhere with Jacko's expertise and services demonstrates the NOI's sustained commitment to using the courts as a resource for building legal precedents and achieving social justice for Muslims in America.[86] It is this legacy, perhaps more than any other, which exemplifies the quest by NOI members to exist, have a respected presence in American society.

NOTES

1. Gerald Horne, *Fire This Time: The Watts Uprising and the 1960s* (New York: Da Capo Press, 1997), 187; William L. Van Deburg, *New Day In Babylon: The Black Power Movement and American Culture, 1965–1975* (Chicago: The University of Chicago Press, 1992), 2–3, 71; Scot Brown, "'To Unbrainwash an Entire People': Malcolm X, Cultural Nationalism, and the US Organization in the Era of Black Power," in *Malcolm X: A Historical Reader*, ed. James L. Conyers, Jr. and Andrew P. Smallwood (Durham: Carolina Academic Press, 2008), 137. Describing his influence in rather blunt terms, William L. Van Deburg claims "[Malcolm X] became a Black Power paradigm—the archetype, reference point, and spiritual adviser in absentia for a generation of Afro-American activists."

2. Horne, *Fire This Time*, 47, 105; Komozi Woodard, *A Nation Within A Nation: Amiri Baraka (LeRoi Jones) & Black Power Politics* (Chapel Hill: University of North Carolina Press, 1999), 7, 50.

3. Clegg, *An Original Man*, 251.

4. Ula Taylor, "Elijah Muhammad's Nation of Islam: Separatism, Regendering, and a Secular Approach to Black Power after Malcolm X (1965–1975)," in *Freedom North: Black Struggles Outside the South, 1940-1980*, eds. Jeanne F. Theoharis and Komozi Woodard (Gordonsville, VA: Palgrave Macmillan, 2003), 178, 182, 185.

5. Clegg, *An Original Man*, 239.

6. Ibid., 243. One strong indication of the NOI's widespread social acceptance in African American communities was Elijah Muhammad's attendance at an awards ceremony held by the National Society of Afro-American Policemen in his honor in June 1969.

7. Woodard, *A Nation Within A Nation*, 87.

8. "Greatest American Playwright Forecasts The Destruction of America!" *Muhammad Speaks*, August 6, 1965, p. 5–6.

9. Clegg, *An Original Man*, 259–260.

10. Report—"Elijah Poole," sec. Legal Representation, September 2, 1960, 26, 27 (Elijah Muhammad FBI file: Part 5).

11. Evanzz, *The Messenger*, 174.

12. "Seeks To Join Cases Against Moslem's Son," *Daily Defender*, September 22, 1959, p. A3, col. 5; *Falbo v. United States*, 320 U.S. 549 (1944). Falbo, a Jehovah's Witness who had received conscientious objector status, claimed that he should have been exempted from all service on the basis that he was a minister. Challenging his status as a conscientious objector, Falbo failed to report to the civilian job of "national importance" to which he was assigned. The Supreme Court held that a registrant who failed to exhaust his administrative remedies could not seek a judicial review of his classification on the basis that he had been erroneously classified. See Bruce J. Winick, "Direct Judicial Review of the Actions of the Selective Service System," *Michigan Law Review* 69, no. 1 (November 1970): 58.

13. Evanzz, *The Messenger*, 239.

14. Hayden Covington, the attorney who argued Falbo's case before the Supreme Court in 1943, would later serve as Muhammad Ali's legal counsel when the boxer received his order to report to the induction center in Houston, Texas, in April 1967. Had Ali refused to report for induction, the chances of him receiving a direct judicial review of his classification would have been virtually impossible. Prior to the Military Selective Service Act of 1967, which Congress passed on July 1, 1967, federal courts typically did not permit direct judicial review of a registrant's classification. Conversely, had Ali taken the symbolic step forward and accepted induction, he would have had to petition for and receive a writ of habeas corpus while under military jurisdiction—a very unlikely scenario. See Winick, "Direct Judicial Review," 57, 60; also, *Muhammad Ali v. Connally*, 266 F. Supp. 345 (S.D. Tex. 1967).

15. Taylor Branch, *Parting the Waters: America in the King Years, 1954–63* (New York: Simon and Schuster, 1988), 294, 296–297; Edgar Dyer, "A 'Triumph of Justice' in Alabama: The 1960 Perjury Trial of Martin Luther King, Jr.," *The Journal of African American History* 88, no. 3 (Summer 2003): 246, 251.

16. Oliver Jones, Jr., examined the NOI's tax exempt status as one of three indicators that measured the group's religious legitimacy. His examination of NOI property in Chicago, for

the year 1976, revealed that "the Muslim ideology has generally been given the benefit of the doubt as regards its legitimacy as a bona fide religion." See Oliver Jones, Jr., "The Black Muslim Movement and the American Constitutional System," *Journal of Black Studies* 13, no. 4 (June 1983): 428.

17. "Lynch-Court Trial in Atlanta Brings Out Devil Nature of 'White Justice'," *Muhammad Speaks*, August 6, 1965, p. 4.

18. Brennetta Howell, "Court OKs Muslimism," *Daily Defender*, June 8, 1965, p. 3, 10.

19. Ibid.

20. Howard Bingham and Max Wallace, *Muhammad Ali's Greatest Fight: Cassius Clay vs. the United States of America* (New York: M. Evans and Company, Inc., 2000), 67.

21. Thomas Hauser, *Muhammad Ali: His Life and Times* (New York: Simon & Schuster, 1991), 99; Bingham and Wallace, *Ali's Greatest Fight*, 69–74, 78.

22. Bingham and Wallace, *Ali's Greatest Fight*, 63–64.

23. Ibid., 15.

24. Hauser, *Muhammad Ali*, 96–97, 99–100.

25. Muhammad, *Message to the Blackman*, 246.

26. Clegg, *An Original Man*, 211.

27. James Booker, "Cassius Gets Lawyer," *New York Amsterdam News*, 7 March 1964, p. 13, col. 5.

28. Clegg, *An Original Man*, 211; Bingham and Wallace, *Ali's Greatest Fight*, 85.

29. "Will the Champ Meet Egyptian Girl on Trip," *New York Amsterdam News*, July 31, 1865, p. 1, col. 1; "Cassius Clay Off on Tour of Europe; Egypt?" *Philadelphia Tribune*, August 3, 1965, p. 3, col. 4.

30. Ali defeated Liston for the second time in defense of his heavyweight boxing title on May 26, 1965; see Bingham and Wallace, *Ali's Greatest Fight*, 106.

31. Horne, *Fire This Time*, 126–127, 130; Evanzz, *The Messenger*, 331; "59 Muslims Charged With Assault," *Daily Defender*, August 23, 1965, p. 7, col. 3.

32. "Muhammad Ali in Honduras," *Muhammad Speaks*, August 6, 1965, p. 2.

33. "Are Cassius and Mate on Brink of Split?" *Pittsburgh Courier*, June 12, 1965, p. 1, col. 1; "Clay Must Pay; Wife Gets $350 A Week," *Daily Defender*, July 1, 1965, p. 3, col. 4.

34. "The Champ Tells The World His Stand," *Muhammad Speaks*, May 5, 1967, p. 10.

35. "A Glance At Scenes, Events Around the World," *Muhammad Speaks*, December 10, 1965, p. 9, 13, 20.

36. Art Sears, Jr., "Newark Cops Wreck Muslim Temple; City Offers to Pay," *Jet*, January 13, 1966, p. 24–27.

37. "Ali Given Jury Trial in Local Case," *Daily Defender*, January 18, 1966, p. 4, col. 5.

38. "Clay Appeals Draft Ruling," Cleveland Call and Post, February 26, 1966, p. 10b, col.1; Muhammad Ali, *Court Documents, Ali v. Texas* (Alexandria, VA: Alexander Street Press, 2003), in *Black Thought and Culture*, http://solomon.bltc.alexanderstreet.com.ezproxy.lib.uh.edu/cgi-bin/asp/philo/bltc/getvolume.pl?S11414 (accessed 17 September 2010).

39. "Cassius Nears Induction," *Daily Defender*, February 14, 1966, p. 28, col.1.

40. Report—"NOI Versus Law and Order," sec. FBI Investigations, 92 (Nation of Islam file: part 3).

41. Ibid., 93.

42. Ibid., 92.

43. David K. Wiggins, "Victory for Allah: Muhammad Ali, the Nation of Islam, and American Society," in *Muhammad Ali: The People's Champ*, ed. Elliott J. Gorn (Urbana: University of Illinois Press, 1995), 99–100.

44. "Freedom and Justice: For the American Blackman!" *Muhammad Speaks*, April 7, 1967, 1; "Justice for U.S. Muslims or Suffer," *Muhammad Speaks*, April 14, 1967, p. 1; "Justice on Trial," *Muhammad Speaks*, April 21, 1967, p. 1.

45. A brief exception can be found in an article appearing in the May 19, 1967, issue of *Muhammad Speaks*. The article discusses the views of Pvt. Ronald McCoy, an NOI member originally from Philadelphia who spoke on his conscientious objection to warfare at Howard University. See "Black Draftee Takes Stand Against U.S. Murder of Yellow People in Viet Nam," *Muhammad Speaks*, May 19, 1967, p. 4.

46. "Cassius Nears Induction," *Daily Defender*, February 14, 1966, p. 28, col.1.
47. Muhammad Ali, *Court Documents, Ali v. Texas* (Alexandria, VA: Alexander Street Press, 2003), in *Black Thought and Culture*, http://solomon.bltc.alexanderstreet.com.ezproxy.lib.uh.edu/cgi-bin/asp/philo/bltc/getvolume.pl?S11414 (accessed September 17, 2010).
48. "Clay Appeals Draft Ruling," *Cleveland Call and Post*, February 26, 1966, p. 10b, col. 1.
49. Dave Kindred, *Sound and Fury: Two Powerful Lives, One Fateful Friendship* (New York: Free Press, 2006), 102; Disc 1, *Muhammad Ali: The Whole Story*, DVD, directed by Joseph Consentino and Sandra Consentino (Burbank, CA: Turner Home Entertainment, 1996).
50. Bingham and Wallace, *Muhammad Ali's Greatest Fight*, 122–123.
51. "Jim Brown at Hearing," *Cleveland Call and Post*, March 5, 1966, p. 10b, col. 1; Bingham and Wallace, *Muhammad Ali's Greatest Fight*, 122–123.
52. Muhammad Ali, *Court Documents, Ali v. Texas* (accessed September 17, 2010).
53. Bingham and Wallace, *Muhammad Ali's Greatest Fight*, 127–128, 130.
54. Bingham and Wallace, *Muhammad Ali's Greatest Fight*, 131; Jeffrey T. Sammons, "Rebel with a Cause: Muhammad Ali as Sixties Protest Symbol," in *Muhammad Ali, The People's Champ*, ed. Elliot J. Gorn (Urbana, IL: University of Illinois Press, 1995), 168; Hauser, *Muhammad Ali*, 154–155.
55. "Muhammad Ali To Seek New Deferment," *Daily Defender*, August 23, 1966, p. 28, col. 1
56. "Clay Plans 5 Fights, Then Join Islam Pulpit," *Pittsburgh Courier*, August 6, 1966, p. 10A, col.3.
57. Ali, *Court Documents, Ali v. Texas* (accessed September 17, 2010).
58. Ibid.
59. As a brief aside, Covington did cite legal precedent from a case that Jacko and Eskridge argued, Thomas Cooper v. Pate (1964) in his own oral arguments defending Ali's conscientious objector status. See Ali, *Court Documents, Ali v. Texas* (accessed September 17, 2010); Howell, "Court OKs Muslimism," p. 3.
60. *Report of the National Advisory Commission on Selective Service*, by Burke Marshall, chairman (Washington, D.C.: Government Printing Office, 1967), v.
61. Ibid., 5, 9, 19, 22.
62. Wiggins, "Victory for Allah," 100–101.
63. "On Behalf of 600 Million: Why World Muslims Protest Draft of Muhammad Ali," *Muhammad Speaks*, April 14, 1967, p. 3.
64. James, *Root and Branch*, 140.
65. Ibid., 138–140.
66. Juan Williams, *Thurgood Marshall*, 101–104.
67. "Challenge to the Selective Service System—The Right to Minority Representation on Draft Boards: Clay v. United States (5th Cir. 1968)" *The Georgetown Law Journal* 57, no. 1 (October 1968): 189–190.
68. "Report of the National Advisory Commission on Selective Service," 19.
69. "Lawyer Sues Cassius Clay for Back Fees," *Cleveland Call and Post*, October 21, 1967, p.1A, col. 8.
70. "Ali Will KO Draft Rap, His Ex-Lawyer Predicts," *Daily Defender*, November 16, 1967, p. 4, col. 3.
71. Ibid.
72. Brad Pye, Jr., "Legal Authorities Say Clay May Kayo His Draft Board," *Los Angeles Sentinel*, December 28, 1967, p. A2, col. 3.
73. "Champion in 10th Defense!" *Muhammad Speaks*, April 14, 1967, p. 9.
74. "Draft Exempt White Minister Declares Muhammad Ali Entitled to Same Status," *Muhammad Speaks*, April 14, 1967, p. 9.
75. "Muslims Struggle Against Georgia Injustice May Aid Blacks in South," *Muhammad Speaks*, March 17, 1967, p. 8.
76. Dave Kindred, *Sound and Fury*, 132–133; David K. Wiggins, "Victory for Allah: Muhammad Ali, the Nation of Islam, and American Society," in *Muhammad Ali: The People's Champ*, ed. Elliott J. Gorn (Urbana: University of Illinois Press, 1995), 102–103.

77. Evanzz, *The Messenger*, 352.
78. Clegg, *An Original Man*, 248.
79. *Clay v. United States* 400 U.S. 990 (1971); *United States v. Clay* 430 F.2d 165 (5th Cir. 1970).
80. Bob Woodward and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York: Simon and Schuster, 1979), 137; Wiggins, "Victory for Allah," 102.
81. Ibid., 138.
82. *Joseph v. United States* 405 U.S. 1006 (1972); Jones, "The Black Muslim Movement and the American Constitutional System," 439.
83. Wiggins, "Victory for Allah," 100.
84. Ibid., 105.
85. Bingham and Wallace, *Muhammad Ali's Greatest Fight*, 229.
86. "Lynch-Court Trial in Atlanta Brings Out Devil Nature of 'White Justice'," Muhammad Speaks, August 6, 1065, p. 4; "Muslim Knocked Down, Beaten by Police; Omaha Black Citizens Organize Protest," *Muhammad Speaks*, 14 April 1967, p. 16; Alvin Ward, "Local Lawyer To Aid in Multiple Suit," Cleveland Call and Post, April 4, 1970, p. 7A, col. 8; Evanzz, *The Messenger*, 369–370.

Conclusion

Largely in response to a society and government that refused to acknowledge its existence as a religious community, the Nation of Islam developed two initiatives to defend and advance the civil rights and liberties of its members. The first involved a series of evolving and often deliberate decisions aimed at obtaining legal recognition of the NOI as a legitimate religious community through protecting the civil liberties of NOI members in established courts of law. After initially viewing the American legal system as unjust and inherently biased against the interests of African Americans, NOI officials, including Malcolm X and Elijah Muhammad, began to recruit and retain competent legal counsel that proved willing to effectively represent the civil liberties of ordinary NOI members in court. These efforts led to the creation of a nationwide cadre of lawyers who helped to establish legal precedents such as *Pierce v. LaValle* (1961) and *Cooper v. Pate* (1964) that enhanced the religious freedoms of its members. In fact, the legal struggles by incarcerated NOI members had a profound impact on the extension and application of civil rights at the time. In his examination of the NOI's legal struggle for recognition and legal legitimacy, Christopher E. Smith notes that *Pierce* and *Cooper* "began the process through which the Muslims' litigation would develop a legal legacy of enhanced, albeit limited, constitutional protections for all prisoners."[1] Thomas G. Blomberg and Karol Lucken are blunter in their assessment of the impact that NOI prisoners had on both civil rights and the Civil Rights Movement. Blomberg and Lucken state:

> During this period of high judicial activism, the extent of involvement by the federal judiciary in jails and prisons was second only to the dismantling of segregation in public schools (Feeley and Hanson, 1990). Litigation brought by Black Muslims was among the most instrumental in mobilizing the prisoner

rights movement. Between 1961 and 1978, an estimated sixty-six federal court decisions were issued relating to Muslim prisoners alone (Jacobs, 1997).[2]

Consequently, pursuing legal legitimacy was a significant theological and strategic development in the NOI's ongoing battles with local, state and federal authorities. Setting aside the novelty of martyrdom and teachings about the predestined damnation of American society, NOI legal initiatives altered the one-sided history of its engagement with these respective agencies. NOI members, whether incarcerated or not, used the courts to defend their rights to peacefully assemble, exercise their religious beliefs, attain due process and equal treatment under the law, conscientiously object to participation in war or military service, and receive ministers, religious publications and holy texts reflective of their own faith and choosing in prisons. At the same time, however, the NOI recognized the importance and influence that social perceptions of the community had on its members' enjoyment of and access to social justice.

The NOI's second initiative to defend and advance the civil rights and liberties of its members involved obtaining social recognition of the group as a legitimate religious community, and often had mixed results. From approximately 1934 to 1942, NOI members, particularly men, faced consistent persecution from local and federal law enforcement agencies, African American civic leaders, and other Muslim communities about the legitimacy of their religious teachings and beliefs. Although this partially had to do with the group's connection to voodoo and human sacrifice, Elijah Muhammad's public ministry that he was the heir apparent to Fard Muhammad and that Fard Muhammad was God, led to accusations that NOI members were hypocrites and apostates. Within this context, material culture, such as garments, produced by NOI women offered an alternative means through which NOI men subject to public harassment and draft evasion charges could defend their civil liberties as conscientious objectors to war. While no definitive explanation exists for why NOI men did not pursue this option in defense of their civil liberties, circumstantial evidence suggests that contemporary understandings of gender roles (on the part of both the NOI and the government) prioritized male dominated spheres of religious worship and social expectations, such as sermons, NOI literature and military service. Thus, government officials seized on the NOI's teachings, and not NOI uniforms, to suggest the group was not religious in nature. Conversely, Elijah Muhammad and other NOI men used their religious training to argue why they would not participate in war or military service.

Broadly speaking, the period between WWII and the end of the Korean War was a period of transition that witnessed the emergence of several events that had a direct influence on the Nation of Islam's legal struggle to defend the civil liberties of its members. On both an institutional and opera-

tional level, the NOI began to increase its membership by expanding the venues in which it sought to propagate its ethno-religious beliefs following the war. These ongoing efforts at propagation and increased membership numbers expanded public awareness of the NOI while simultaneously creating alternative sources of revenue for the religious community. Yet, there were also other developments that would have favorable consequences for the NOI. By 1940, Charles H. Houston, the prolific legal scholar who provided the legal framework for dismantling segregation in public education, began to alter his objectives at Howard University's School of Law to meet the evolving legal needs of African Americans. Most significantly, Houston reprioritized the discussion of civil liberties such as freedom of religion, speech, and assembly within his course on civil rights. Whereas access to professionally competent and willing legal representation had eluded the Nation of Islam prior to this development, the emergence and eventual retention of perceptively trained lawyers such as Edward W. Jacko, Jr., a former student in Houston's revamped civil rights course, would allow the Nation of Islam to defend the religious beliefs of its members from a position of power.

Despite these developments, the NOI continued to face an uphill battle in its struggle to attain social legitimacy following World War II. Labeled subversive, extremist, violent, irreligious and militant by the federal government and major newspapers at the time, alternately described as socially and politically reactionary by academics, and set upon by local, state and federal law enforcement agencies, NOI members had consistently encountered challenges to their existence as a religious community in American society. Moreover, despite the fact that the modern Civil Rights Movement had already gotten underway, nationally recognized civil rights figures, such as Thurgood Marshall, sought to marginalize and publicly persecute the NOI on similar grounds.

Following the brutal beating of Joshua Hinton in 1957, the Nation of Islam's efforts to defend the civil liberties of its members underwent significant change. As it had prior to Hinton's arrest, the group saw itself continuing to battle with law enforcement officials over whether it was a legitimate religious community. So long as the NOI confronted agencies stemming from the executive branch (e.g., the FBI, Federal Bureau of Prisons, local police, etc.) on its own and in a one-dimensional manner, it remained in a relatively weak position to protect the civil liberties of its members. In opening up a second front in its struggle for civil liberties, and by pursuing legal initiatives in the courts that questioned the constitutionality of the religious discrimination its members endured, the NOI placed itself in an empowered and more favorable position to protect the religious freedoms of its members. It was within the court of law that the NOI began to achieve some semblance of equity in its ongoing battle with the Department of Justice.

The role of Malcolm X as a major influence in the development of the NOI's struggle for civil liberties and social justice at this moment in time cannot be overstated. With respect to prisoner rights specifically, Malcolm X's proactive use of coalition politics and competent lawyers allowed the NOI to make legal advancements concerning its status as a religious community. Encouraged and assisted by Malcolm X, incarcerated NOI members filed a number of petitions in pursuit of their civil liberties after 1957. Three of these cases proved instrumental in establishing the legal precedent that removed legal questions surrounding the religiosity of the NOI. At the same time, the NOI's quest to secure religious freedom for its members in prison and elsewhere had to be understood within the religious community's complex ethno-religious belief system.

The NOI developed *Muhammad Speaks* to define its beliefs and defend the civil rights and liberties of its members within the court of public opinion. In so far as this newspaper introduced, if not shifted, massive numbers of African Americans to the opinions and beliefs of the NOI, it was largely successful as a measure of the NOI's social legitimacy in African American communities. While longstanding policies within the NOI, such as Elijah Muhammad's admonition to NOI officials to avoid conflict with law enforcement agencies, coupled with a shift in African American political consciousness and expression during the mid 1960s led to a surge in the NOI's social legitimacy, it simultaneously had unintended and perhaps negative consequences on the NOI's efforts to defend the civil rights and liberties of its members. Indeed, the NOI's effort to avoid government censure by failing to create and sustain a movement around the collective plight of NOI men with respect to pursuing conscientious objector status—at a time when the social legitimacy of military service was being called into question on a national level—proved to be a historic missed opportunity to broaden the group's social legitimacy as a religious community and advance the civil rights and liberties of its members. How else can one explain contemporary attempts to appropriate Ali's image and history as symbols of nonviolent civil rights protest while simultaneously negating the civil rights tradition from which it emerged? Some of the blame, perhaps, rests with the NOI's frequent and consistent public denunciation of African American civil rights struggles and figures.

Despite giving lip service to the idea that the African American pursuit of civil rights was pointless, the evidence clearly suggests that the NOI developed various strategic initiatives to help defend and advance the civil rights and liberties of its members. Stemming from its encounters with police brutality in the late 1950s, the religious community retained competent and professionally responsible legal counsel. The creation of *Muhammad Speaks* in the early 1960s as a concrete initiative to improve the NOI's relations within African American communities, moreover, also reflected this dual

reality. Ultimately, examining the civil rights initiatives of the NOI will be imperative to understanding the NOI's social and public history from a critical and systemic basis.

NOTES

1. Christopher E. Smith, "Black Muslims and the Development of Prisoners' Rights," *Journal of Black Studies* 24, no. 2 (December 1993): 139.

2. Thomas G. Blomberg and Karol Lucken, *American Penology: A History of Control*, 2nd ed. (New Brunswick: Aldine Transaction, 2010), 141.

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